TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 21.

T. H. RHODES, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 25, 1894.

(15,648.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 23, 1896.

a Pleas before the supreme court of Iowa in a cause therein tried and determined, wherein The State of Iowa was plaintiff and appellee and T. H. Rhodes, defendant, appellant.

Be it remembered that on the 17th day of January, 1893, there was filed in the supreme court of Iowa a printed abstract of the record, the same being in the words and figures following, to wit:

1 In the Supreme Court of Iowa, January Term, 1893.

THE STATE OF IOWA, Appellee,
vs.
T. H. RHODES, Appellant.

Appeal from the judgment of the Washington district court.

At law.

D. Ryan, judge.
H. M. Eicher, for the appellant.
C. J. Wilson, for the appellee.

Appellant's Abstract.

On the 26th day of August, 1891, the appellee filed in the office of E. W. Swisher, a justice of the peace in and for Washington county, Iowa, an information charging the defendant, T. H. Rhodes, with unlawful transportation of intoxicating liquors conveyed from Burlington, Iowa, to Brighton, Iowa.

2 On the trial and hearing of the charge made in said information, before said justice, the defendant was convicted of the crime as charged, and adjudged to pay a fine of the sum of one hundred dollars ($100) and the costs of the proceeding.

The appellant appealed from the verdict and judgment of said justice to the district court of Washington county, Iowa.

On the 6th day of October, 1891, this cause came on for trial in the said district court before D. Ryan, sole judge (a jury being waived), and the appellee offered in evidence the following

Agreed Statement of Facts.

It is agreed by the parties to this action that the facts herein stated shall be used as testimony in the trial of this proceeding and the same shall be subject to objection for materiality and relevancy.

The Chicago, Burlington and Quincy Railway Company, herein designated as the C., B. & Q., is a common carrier incorporated under the law of Illinois and is located in the State of Illinois and Iowa and many other States, and runs a continuous line of its railway from Dallas, Illinois, to Burlington, Iowa, and beyond said points.

The Burlington and Western Railway Company, herein designated as the B. & W., is a common carrier incorporated under the

law of Iowa, and located and doing business wholly within
3 Iowa, running a continuous line of its railway from Burlington, Iowa, to Oskaloosa, Iowa, with intervening stations, one being at Brighton, in Washington county, Iowa, and a depot is there maintained by said carrier.

Both the aforesaid carriers have a station at Burlington, Iowa, where they, as such, jointly use the same depot in their business and the said C., B. & Q. has a station and depot at Dallas, Illinois.

The said carriers have between themselves "joint freight tariffs" and do through billing with each other by transporting under a single waybill from any station on either of the lines to any station on the line of the other as demanded, any legitimate articles for transportation, and divide compensation for the same on the percentage basis.

The defendant is the station agent, and in the employ of the said B. & W. at Brighton, Iowa, and there transacts the business for said B. & W. as such common carrier.

The Dallas Transportation Company and the members and individuals composing the same are non-residents of the State of Iowa and are all residents of and located within the State of Illinois.

All matters and facts hereinbefore stated have been in existence continuously during the whole of the year 1891 and for some time prior thereto.

On the 4th day of August, 1891, said Dallas Transportation Company delivered to said C., B. & Q. at Dallas, Illinois, an article of merchandise consisting of one wooden box, about one foot cube in size, marked "W. H., Brighton, Iowa," and demanded of the said
C., B. & Q. the shipment of the said box from Dallas, Illinois,
4 to Brighton, Iowa, and directed that at Brighton the box be delivered to one William Hown, who was the consignee in the shipment and was then a resident of Jefferson county, Iowa. And the said Dallas Transportation Company at the time and place of such delivery for shipment, represented to and informed the station agent of the said C., B. & Q. at Dallas, Illinois, receiving said box for transportation, that the contents thereof were groceries. It was customary for said transportation company to ship intoxicating liquors and the said C., B. & Q. agent knew of the said custom at the time.

Said C., B. & Q. received said box as groceries from said transportation company at Dallas, Illinois, on the 4th day August, 1891, for shipment from Dallas, Illinois, to Brighton, Iowa, in the capacity of common carrier and on the same day started the shipment on the said transportation from Dallas, Illinois, over the line of said C., B. & Q. consigned and billed through from the said starting point to Brighton, under a single freight contract, a copy of which is hereto attached, marked "Exhibit A" and shall have the same force and effect as the original.

In due course of time, about August 5th, 1891, said shipment arrived, over the C., B. & Q., at Burlington, Iowa, and was there by said C., B. & Q. delivered to said B. & W. for transportation to Brighton, Iowa. Said B. & W. as common carrier transported

said box to its destination under said original consignment and it was delivered at Brighton, Iowa, on the platform on the outside of the B. & W. depot by the trainmen of the said B. & W.,
5 August 5th, 1891, about 3 p. m.

Immediately after the delivery of said box on the platform, this defendant, complying with the directions of his employer, opened the door of the depot building leading from the said platform and transferred said box and other freight on the inside of said building, which inside is commonly known as the freight-room. The moving of said box by this defendant did not exceed six feet, and after said moving the defendant at once reclosed the door and returned to his own business room in another portion of the said building. This defendant had no physical connection with the transportation of said box except its removal from the platform to the freight-room as herein stated, and any act done by the defendant pertaining to the said box or any possession held by him of the same was in the capacity of agent for the said B. & W. in said transportation. Said box was never delivered by this defendant or any other person to the consignee, but remained in the possession of the B. & W. until taken from it as hereinafter stated.

About 4 o'clock p. m of August 5, 1891, said box was seized by W. H. Snyder, a constable in and for Washington county, under a search warrant issued by E. W. Swisher, a justice of the peace in and for Washington county, Iowa, on an information filed before him charging that intoxicating liquors improperly marked were in the said building. Said search warrant directed said constable to search said building for intoxicating liquors and seize the same. After due notice of the seizure of the liquors and the trial thereof
6 and no one appearing to claim or defend said article seized, the same was put on trial and by the said justice as a court condemned as intoxicating and ordered destroyed and the order was executed.

The compensation amounting to thirty-five cents, due said C., B. & Q. and B. & W. for the said transportation under said consignment, was due and unpaid at the time of said seizure and the said box was at the time of seizure, held by this defendant for the payment of said charges, and for delivery to the consignee upon payment of the same.

The contents of the said shipment was a jug containing whisky completely enclosed and hidden by such box and said whisky was intoxicating, but the character and circumstance of said shipment and the contents of said box were unknown to the said C., B. & Q. and B. & W. unless the knowledge thereof, if any, that was in possession of the defendant, Rhodes, or said agent at Dallas, Illinois, could be imputed to them. The knowledge of the defendant of the character and circumstance of the said shipment or of the contents of said box is not stated herein and either party to this action may introduce oral testimony on the trial of this cause to show such knowledge or the want of it.

Marking articles of merchandise with the initials of the con-

signee is a common way among common carriers of marking any legitimate articles delivered to them for transportation.

Said shipment was consigned and transported by the said carriers from Dallas, Illinois, to Brighton, Iowa, under a "through waybill." A true and complete copy of the said waybill is
7 hereto attached, marked "Exhibit B," and made a part hereof and conceded the same force and effect as the original. The purpose of a waybill is to describe the articles transported and to accompany the shipment by passing from conductor to conductor and agent to agent and thus aid the employees of such carriers to keep track of the shipments.

The marks hereinbefore referred to, namely, "W. H., Brighton, Iowa," were the only marks of any kind that were on the said box or any part of said shipment during the whole of said transportation and the same was not marked as provided by section 2412, McClain's Code 1888.

Neither this defendant nor the said B. & W. held the proper permit from the authorities of Washington county, Iowa, for the transportation or sale of intoxicating liquors and neither of them were furnished with a certificate from the county auditor of said county certifying that the consignee, William Hown, was authorized to sell intoxicating liquors in the said Washington county, Iowa, as provided for by section- 2367 and 2371 of said McClain's Code.

There was nothing in the appearance of said box indicating what were the contents thereof and it remained unchanged during the entire transportation.

Eithe- party may offer other evidence in the trial of this cause.

Signed by attorneys of parties.

EXHIBIT "A."

DALLAS CITY, ILLINOIS, 8, 4, 1891.

8 Received of the Dallas Transportation Company at the depot of the C., B. & Q. railroad, the following articles in good order to be delivered in like good order to William Hown.

Marks: W. H., Brighton, Iowa.

Articles: One box groceries. 40. Owner's risk.

EXHIBIT "B."

Chicago, Burlington and Quincy Railroad Company.

Dallas, Ill., to Brighton, Ia., via Burl. and B. & W. R'y.

Date, Aug. 5, 1891.

Consignor and original point of shipment: Dallas T. Co.

Consignee and destination: William Hown. W. H., Brighton, Iowa.

Description of freight: One box groceries. O. R.

Weight and class: First. 40.

Local or line charges: 25.

State rests.

The defendant offered the following evidence:

T. H. RHODES testifies:

I am the defendant and for two years and eight months have been the station agent for the Burlington and Western railway at Brighton, Iowa, and was in that business during the month of August, 1891. About August 5, 1891, I received by freight a box marked "W. H., Brighton, Iowa," and this was afterwards seized by W. H. Snyder, constable, and was condemned. A through
9 waybill accompanied the shipment and Exhibit "B" attached to the agreed statement of facts is a true copy of the same. No other papers came with the shipment. The charges due for transportation of the box were twenty-five cents.

State objects to last sentence because immaterial and irrelevant. Overruled and State excepts.

Previous to the arrival of the box, Mr. Fleak, mail-carrier, told me he was looking for a box from Dallas city and called for a box for William Hown. I told him I had received no box of that description and I think he came back a second time and asked if I had received a box for William Hown and said it was likely to be marked "W. H.," and would contain alcohol or whisky and I told him I had received nothing of that description and he went away, but on the next day I received it. Mr. Fleak said he expected it on most any train and that Mr. Hown had told him to get it for him, but I told him I could not deliver it to him without a written order from Hown and he said he would get one. I do not remember whether he said anything more or not. He told me what it would likely contain and how it would be likely marked. When I got this package and examined the waybill I supposed from what Mr. Fleak told me that perhaps this was the box that he told me would come. From the waybill I got the information that it was a box of groceries.

Q. What did you suppose it was?

Objected to by the plaintiff because irrelevant and immaterial. Sustained and defendant excepts.

10 All the knowledge I had pertaining to the contents of the box was what I acquired from the waybill, "Exhibit B," and the conversation with Mr. Fleak.

Cross-examination:

Mr. Fleak told me the box would come from Dallas, Illinois. I think prior to that time I had received shipments over the road called whisky, but I don't remember, but not at this time.

Testimony closed.

At the conclusion of the taking of the aforesaid testimony it was agreed that the cause be submitted to be argued in writing and decision entered in vacation as of this term with the same force and effect as if decision had been entered now.

On the 25th day of April, 1892, the court rendered a verdict by finding the defendant guilty as charged in the information.

Thereupon, on the same day, the defendant submitted to the court his motion for a new trial, alleging:

The verdict and finding is contrary to the law and the evidence in the case.

The evidence fails to show that the said liquors were not properly marked, or that the defendant was in any manner instrumental or connected with transporting or conveying between points, or from one place to another within the State of Iowa, intoxicating
11 liquors of any description.

The evidence does show:

That the liquors charged herein to have been illegally transported by this defendant were properly marked as required by the laws of Iowa and that the said shipment is not one that is prohibited by or in violation of the statutes of the State of Iowa.

That the liquors of which this defendant is charged with transporting had acquired no location in the State of Iowa, and therefore not subject to the jurisdiction thereof.

On the same day said motion for new trial was overruled and the court thereupon pronounced judgment upon the verdict and ordered and adjudged that the defendant pay a fine in the sum of one hundred dollars ($100) and that he stand committed until the same is paid.

To the finding of said verdict, the overruling of said motion for new trial and to the entering of said judgment, the defendant at the time duly excepted.

A bill of exceptions, as follows, was duly signed by the court and filed and made of record in this cause.

Be it known, that on the —day of October, 1891, this cause came on for trial in said court, D. Ryan, judge, the plaintiff appearing by C. J. Wilson, Co. att'y, and the defendant appearing by his attorney, H. M. Eicher.

A jury being waived the cause was submitted and tried to
12 the court and the following matters were introduced as testimony in the trial of said cause and its hearing, to wit:

1. The "agreed statement of facts" and the exhibits thereto attached and filed in this cause on the 6th day of October, 1891.

2. The testimony of the defendant as taken down in shorthand at the time by the shorthand reporter, the minutes and notes of which have heretofore been *been* filed in this cause, the same being as follows: (Here shall be inserted the extended notes of the shorthand reporter as hereinbefore referred to.) No other testimony was introduced in the said hearing and it was agreed that the cause should be submitted and verdict and judgment rendered in vacation to have same effect as if entered now.

Argument of counsel was heard after which the court rendered the following verdict and finding on the said 25th day of April, 1892, "Guilty as charged in the information," to which verdict and finding and the entering thereof the defendant then and there duly excepted.

On the said 25th day of April, 1892, after the said verdict and finding being made, the said defendant filed the motion for new trial as follows: (Here shall be inserted a full copy of said motion) and on the same day of the filing thereof the said motion was heard and considered by the said court, and by the court overruled, to which overruling of the said motion for new trial the defendant then and there duly excepted.

On the said 25th day of April, 1892, after the hearing and
13 overruling of the said motion for new trial the court entered the following judgment on the said finding and verdict: (Here insert copy of judgment.) To which judgment and the entering thereof the defendant then and there duly excepted.

This bill of exceptions is signed by the court and filed in this cause within the time provided for the same in the order therefor in the said court.

D. RYAN, *Judge.*

On the 14th day of October, 1892, the defendant took his appeal from the judgment of the said district court in this cause to the supreme court of Iowa by serving notice of such appeal in due form upon C. J. Wilson, county attorney of Washington county, Iowa, and attorney for the appellee in this proceeding, and upon S. W. Neal, clerk of the district court of Washington county, Iowa, and the said notice of appeal was on the same day filed and made a part of the record of this proceeding.

The foregoing pages are a true, complete and correct abstract and transcript of all the evidence, pleadings and proceedings had in the trial and determination of this cause and constitutes a complete abstract of the entire record of this proceeding from its inception and of all matters pertaining thereto.

H. M. EICHER,
Attorney for Appellant.

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(Endorsed:) "I hereby acknowledge due and legal service of this abstract, and acknowledge receiving copy this 14 day of Jan., 1894. C. J. Wilson, Co. att'y. Jno. Y. Stone, att'y gen'l."

15 And afterwards, on the 28th day of August, 1893, the appellant filed in the office of the clerk of said supreme court a printed amended abstract in the words and figures following, to wit:

16 In the Supreme Court of Iowa.

THE STATE OF IOWA, Appellee,
vs.
T. H. RHODES, Appellant.

Appeal from the judgment of the Washington district court.

At law.

D. Ryan, judge.
H. M. Eicher for the appellant.
C. J. Wilson for the appellee.

Amendment to Appellant's Abstract.

The defendant, as an amendment to his abstract herein filed, states:

That a true and correct copy of the information filed against the defendant in this action and referred to on page 1 in original abstract is as follows:

STATE OF IOWA, }
Washington County, } *ss:*

In Justice's Court, before E. W. Swisher, Justice of the Peace in and for Brighton City Township.

17 STATE OF IOWA }
vs. } Information.
T. H. RHODES. }

Complainant states that on the 6th day of August, A. D. 1891, the defendant, T. H. Rhodes, was agent at Brighton, in the county of Washington and State of Iowa, for the American Express Company and for the Burlington & Western Railway Company, and as agent aforesaid was in the employ of said American Express Company and said Burlington & Western Railway Company.

That said defendant, T. H. Rhodes, on the 6th day of August, A. D. 1891, at the township of Brighton city, in the county of Washington and State of Iowa, then and there being as agent aforesaid, did knowingly, wilfully and unlawfully receive for the purpose of delivering to another, certain intoxicating liquor that was being unlawfully transported or conveyed from Burlington, Iowa, to Brighton, Iowa, viz., one box containing a two-gallon jug, and said jug being full of whiskey, alcohol or other intoxicating liquor, said box being marked "W. H.," Brighton, Iowa, and was not plainly and correctly labeled or marked, showing the quantity and kind of liquor contained therein.

Contrary to statute in such case made and provided and against the peace and dignity of the State of Iowa.

Wherefore complainant asks that the said T. H. Rhodes be arrested and dealt with as the law directs.

Subscribed and sworn to.

Respectfully submitted.

H. M. EICHER,
Attorney for Appellant.

(Endorsed:) "Service accepted August 28, 1893. Jno. Y. Stone, att'y gen'l."

18 And said cause was duly submitted to said supreme court at its January term, 1894, and, the cause having been fully considered, said court, at its May term, 1894, on the 8th day of May, 1894, filed its opinion in writing, the same being in the words and figures following, to wit:

19 Filed May 8, 1894.

THE STATE OF IOWA, Appellee,
vs.
T. H. RHODES, Appellant.

Appeal from Washington district court—Hon. D. Ryan, judge.

The defendant was convicted and fined $100.00 for knowingly, wilfully, and unlawfully receiving, for the purpose of delivering to another, certain intoxicating liquors, which were being, as it is alleged, unlawfully conveyed in this State.

He appeals.

Jno. Y. Stone, att'y general, Thos. A. Cheshire, C. J. Wilson, and E. M. Shelton for appellee.

H. M. Eicher and Hedge & Blythe for appellant.

KINNE, *J.*:

1. The defendant was arrested upon an information charging that he was the agent of the Burlington & Western Railway Company at Brighton, Iowa, and that on August 6, 1891, as such agent, he "did knowingly, wilfully, and unlawfully receive, for the purpose of delivering to another, certain intoxicating liquor that was
20 being unlawfully transported or conveyed from Burlington, Iowa, to Brighton, Iowa, viz., one box containing a two-gallon jug, and said jug being full of whiskey, alcohol, or other intoxicating liquor, said box being marked 'W. H.,' Brighton, Iowa, and was not plainly or correctly marked, showing the quantity and kind of liquor contained therein."

The case was first tried before a justice of the peace, and defendant was convicted and fined $100.00. From this judgment he appealed to the district court, where a jury was waived and a trial had to the court. He was again found guilty and adjudged to pay a fine of $100.00, from which judgment this appeal is prosecuted. From the

evidence it appears that on August 4, 1891, the Dallas Transportation Company, a corporation doing business in the State of Illinois, delivered to the C., B. & Q. R'y Co., at Dallas, Ill., one wooden box about a cubic foot in size, marked "W. H., Brighton, Iowa;" that the consignor of said box, when it left it with the railway company for transportation, represented to the railway company that it contained groceries.

This box was shipped over the C., B. & Q. R'y to Burlington, Iowa, and then transferred to the B. & W. R'y for shipment to Brighton, Iowa. The shipment was made the entire distance upon a single waybill.

August 5, 1891, said box arrived at Brighton, and was delivered on the depot platform by the trainmen. Immediately thereafter the defendant, in compliance with the directions of his employers, carried said box from the platform into the freight-room of the depot building, where on the same day it was seized by a constable under a search warrant. At the time of the seizure the freight on the box was due and unpaid.

21 Enclosed in the box was a jug containing whiskey, but it was so enclosed as to be hidden from view. At the time it was seized the box was being held by the railway company for the payment of charges and for delivery to the consignee.

Neither the defendant nor the road by whom he was employed held a permit for the transportation or sale of intoxicating liquors, and neither had a certificate from the county auditor that the consignee was authorized to sell intoxicating liquors in Washington county, Iowa. Previous to the arrival of the box a mail-carrier told defendant he was looking for a box from Dallas city for William Hown, and said it was likely to be marked "W. H.," and would contain alcohol or whiskey; that he told the mail-carrier that he had not received a box of that description; that it arrived the next day. He supposed, perhaps, this was the box the mail-carrier told him would come.

2. The information in this case is based upon a violation of code, section 1553, as amended.

McClain's Code, section 2410. This section provides that:

"If any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or of any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported, or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is

22 authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of such company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of one

hundred dollars for each offense and pay costs of prosecution and the cost shall include a reasonable attorney fee to be assessed by the court which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State to issue the certificate herein contemplated, to any person having such permit and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires as shown by the county records. Provided, however, that the defendant may show as defense hereunder, by preponderance of evidence, that the character and circumstances of the shipment and its contents were unknown to him."

Under this section, in order to sustain the judgment in this case, it must appear that defendant, knowing that the box contained intoxicating liquor, transported or conveyed the same between points or from one place to another within this State without first having been furnished with a certificate from the county auditor. We think defendant's testimony, heretofore referred to, clearly shows that he knew that the box contained intoxicating liquors. It is conceded that neither defendant, his company, nor Mr. Hown had a right or permit to sell intoxicating liquors, and that neither defendant or said company had a certificate from the auditor of
23 Washington county showing that any of the persons named were authorized to keep or sell intoxicating liquors.

But two questions remain to be considered: First, did the liquor when it first entered this State become subject to the jurisdiction of our laws, or would such jurisdiction only attach when the shipment had reached its destination, viz., Brighton, Iowa, or when it was delivered to the consignee? and, second, was the defendant, in the removal of the liquor from the platform to the freight depot, engaged in transporting or conveying it within the meaning of the section quoted?

An elaborate argument is made by defendant's counsel to show that the liquor did not become subject to the jurisdiction of our laws until its "arrival in" this State, and it is contended that it did not arrive within this State within the meaning of the Wilson bill until the contract of carriage had been completed.

The so-called Wilson bill reads as follows:

"All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not

be exempt therefrom by reason of being introduced therein in 'original packages' or otherwise."

We do not deem it necessary to enter into an extended consideration as to what is interstate commerce. We think the lan-
24 guage of the Wilson bill, when considered with reference to the evil sought to be remedied, clearly indicates an intention on the part of Congress to make such liquors the subject of State legislation and jurisdiction the moment they cross the boundary of Iowa and enter the State.

Under the decision in Leisy's case, 135 U. S., 123, such liquors in original packages did not become the subject of State jurisdiction until mingled with the common mass of property therein until sold. In that case the right of Congress to permit the State to exercise jurisdiction over such articles prior to their sale therein was fully recognized. It was for the purpose of removing all impediments to local jurisdiction as to imported liquors on their arrival within such jurisdiction that the Wilson bill was passed.

Wilkerson, sheriff, *vs.* Rahrer, 11 Sup. Ct. Rep., 865.

By the Wilson bill these imported liquors upon arrival within the State were subjected to the operation of its laws enacted in the exercise of its police powers as fully as though such liquors had been produced in such State. Now, if in this case the liquor had been produced at a point within the State and consigned over the B. & W. R'y to Brighton, Iowa, there could be no question that our laws would apply thereto, and it is equally clear that upon crossing the border of this State and entering it such imported liquor becomes at once subject to its laws the same as — produced in the State.

In re Spickler, 43 Fed. Rep., 653, the circuit court of the U. S. in treating of this matter says: "The Wilson bill upon its adoption made subject to State police laws all imported liquors as soon
25 as they should pass within the boundary of the State."

In the case of *In re* Van Vliet, *id.*, 761, it is said: "The original package, when it arrives within the State where its transit terminates, is at once reduced to the rank of domestic liquor, enjoys no privileges not enjoyed by domestic liquor."

In State *ex rel.*, etc., *vs.* Fraser *et al.*, 48 N. W. Rep., 343, the court said: "On crossing the boundary line of a State the supreme authority has declared by this enactment that interstate liquor ceases to be an object of Federal protection and control and becomes mingled with the mass of property within the State, and, in common with all such property, is subject to local police regulations." If, as appellant contends, imported liquors consigned to a place within this State could be lawfully transported thereto, it is certain that such liquors would not be subject to the operation of our laws to the same extent and in the same manner as liquors produced in this State.

It seems to us the view that State jurisdiction attaches when the imported liquor enters the State is not only in accord with a reasonable construction of the Wilson bill itself, but in furtherance of

the purposes sought to be accomplished by the passage of that act, and finds full support in the authorities.

3. Was the defendant, in the removal of the liquor, engaged in transporting or conveying it within the meaning of our statute? The language of the statute is broad enough to cover the act of defendant in removing the liquor from the platform to the freight-room of the depot. He was one of the instruments necessary to complete the act of transportation. If it be not so, then clearly he is clearly within the terms of the act, as he conveyed the
26 liquor from "one place to another within this State." His guilt is not to be determined by the distance he conveyed the package, but his conveying it any distance was a violation of the law. With the propriety of legislation making such an act a crime, and with the severity of the punishment attached to doing the act, we have nothing to do.

The judgment below must be affirmed.

[Endorsed:] May 8th. State *v.* Rhodes.

27 And on the same day a final judgment was rendered in said court and duly entered of record, the same being in the words and figures following, to wit:

"THE STATE OF IOWA *vs.* T. H. RHODES, Appellant. } Appeal from Washington Dist. Court.

In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellant pay the costs of this appeal, taxed at $22.75, and that execution issue therefor."

And afterwards there were filed in the office of said clerk, upon the dates respectively endorsed thereon, a petition for writ of error, writ of error bond, citation, and assignment of errors, the originals of which are hereto attached and transmitted herewith as part of the return to said writ, and true and correct copies thereof have been retained and lodged in the office of the clerk of said court.

28 To the honorable chief justice of the supreme court of the State of Iowa:

Your petitioner, T. H. Rhodes, conceiving himself aggrieved by the affirmance by the supreme court of the State of Iowa of a judgment entered against him in the district court of the State of Iowa in and for Washington county, in a suit wherein The State of Iowa is plaintiff and he is defendant, as set forth by the assignment of errors hereto attached and made a part hereof—the opinion affirming said judgment having been filed in said supreme court on May

8, 1894—prays that a writ of error be allowed in said cause from the Supreme Court of the United States to the supreme court of the State of Iowa.

J. W. BLYTHE AND
THOMAS HEDGE,
Attorneys for T. H. Rhodes.

Filed Jun- 26, 1894.

G. B. PRAY,
Clerk Supreme Court.

29 *Assignment of Errors.*

Filed June 26, 1894. C. B. Pray, clerk supreme court.

Now comes T. H. Rhodes, the defendant in the suit referred to in the attached petition for writ of error, by his attorneys, J. W. Blythe and Thomas Hedge, and says that the act of which he was found guilty and for which he was fined in said suit was done in the performance of a contract of transportation of an article of commerce (intoxicating liquor) from a point in the State of Illinois to a point in the State of Iowa, and that in the record and proceedings had in the supreme court of the State of Iowa in said suit in which he is the defendant and The State of Iowa is the plaintiff there is manifest error in this, to wit:

I.

The court erred in holding that the effect of the act of Congress of August 8, 1890, as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise,"

is to render illegal or obnoxious to the operation of the criminal statutes of Iowa an act done in pursuance of a contract of transportation of an article of commerce from a point in another State to a point in the State of Iowa.

II.

The court erred in holding that the said act of Congress of August 8, 1890, gave jurisdiction or authority to the sovereignty of Iowa to invalidate or impair by its statute a contract of transportation of an article of commerce from a point in another State to a point within the limits of the State of Iowa.

III.

The court erred in holding that the liquor in question became subject to the operation of section 1553 of the Code of Iowa before the act of transportation was completed and the contract of transportation performed according to its terms, said section 1553 being as follows, to wit:

"If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of such company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offense and pay costs of prosecution and the cost shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State, to issue the certificate herein contemplated, to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires as shown by the county records. Provided, however, that the defendant may show as a defense hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him."

IV.

The court erred in holding the defendant guilty of violation of said section 1553 of the Code of Iowa, as said section can have no force or effect to forbid the performance of a legitimate contract of transportation of an article of commerce from a point in another State to a point in Iowa.

V.

The court erred in holding that said section 1553 of the Code of Iowa was not repugnant to the Constitution and laws of the United States in so far as said section attempted to forbid the transportation of intoxicating liquor in the original package from the boundary of

the State of Iowa to the destination of the same within said State without the certificate in said section provided for, said trans-
31 portation within the State of Iowa constituting a part of an interstate journey, the initial point of which was without the State of Iowa.

Wherefore the said T. H. Rhodes prays that the judgment of the supreme court of the State of Iowa be reversed.

J. W. BLYTHE,
THOMAS HEDGE,
Attorneys for T. H. Rhodes.

Filed Jun- 26, 1894.

G. B. PRAY,
Clerk Supreme Court.

32 Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Iowa, as plaintiff, and T. H. Rhodes, as defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or
33 of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said T. H. Rhodes, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within — days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk of the Circuit Court of the United States for the Southern District of Iowa.

Allowed by—
C. T. GRANGER,
Chief Justice of the Supreme Court of the State of Iowa.

[Endorsed:] Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

34 Know all men by these presents that we, T. H. Rhodes, as principal, and —— ——, as sureties, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a term of the supreme court of the State of Iowa, in a suit depending in said court between The State of Iowa and T. H. Rhodes, a judgment was rendered against the said T. H. Rhodes, and the said T. H. Rhodes having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Iowa, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said T. H. Rhodes shall prosecute said writ to effect and pay said judgment, or such part of it as the Supreme Court of U. S. direct, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

T. H. RHODES. [SEAL.]
C. E. PERKINS. [SEAL.]
C. M. LEVEY. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Above bond approved, the same to operate as a supersedeas, bail, and stay bond.

C. T. GRANGER,
Chief Justice of the Supreme Court of the State of Iowa.

[Endorsed:] Filed Jun- 26, 1894. G. B. Pray, clerk supreme court.

35 UNITED STATES OF AMERICA, *ss:*

To the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein T. H. Rhodes is the plaintiff in error and you are defendant in errow, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. T. Granger, chief justice of the supreme court of the State of Iowa, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

C. T. GRANGER,
Chief Justice of the Supreme Court of the State of Iowa.

36 Rec'd this writ at Des Moines, Iowa, June 26, 1894, and on June 27, 1894, I delivered a true copy thereof to Frank D. Jackson, governor of Iowa, at his office in Des Moines, Iowa, and on the 7th day of July, 1894, I delivered a true copy thereof to John Y. Stone, attorney general of the State of Iowa, at Council Bluffs, Ia.

FRANK P. BRADLEY,
U. S. Marshal, Southern District of Iowa,
By S. S. ETHRIDGE, *Deputy.*

37 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings of a cause, tried and determined in said court, between The State of Iowa, plaintiff, and T. H. Rhodes, defendant, appellant, to wit, the record, consisting of appellant's abstract and amended abstract and the opinion and final judgment entry, filed in said cause and duly entered of record.

And I further certify that the originals of petition for writ of error, writ of error, bond, citation, and assignment of errors (true and correct copies of which remain lodged in my office) are hereto attached and made a part of this transcript, and this return is made in obedience to said writ of error.

Seal of the Supreme Court of Iowa.

In testimony whereof witness my signature and official seal, at Des Moines, Iowa, this 3rd day of July, 1894.

G. B. PRAY,
Clerk Supreme Court of Iowa.

Endorsed on cover: Case No. 15,648. Iowa supreme court. Term No., 146. T. H. Rhodes, plaintiff in error, *vs.* The State of Iowa. Filed July 24th, 1894.

No. 21.

Brief of Blythe Lot (15,648.) P. C.

SEP 18 18
CLERK

Filed Sept. 18, 1896.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1896.

No. 146.

T. H. RHODES, *Plaintiff in Error,*

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

Assignment of Errors and Argument.

BURLINGTON, IOWA:
ACHES, BLACKMAR & CO., PRINTERS.
1896.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1896.

No. 146.

T. H. RHODES, *Plaintiff in Error,*

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

STATEMENT OF THE CASE.

The plaintiff in error, T. H. Rhodes, was the station agent at Brighton, Iowa, of a railway company, whose road was operated by steam, and which was a common carrier of goods and chattels thereon, for hire.

Its road, by its connection with other railroads, formed a continuous line for the transportation of freight from Dallas, Illinois, to Brighton, Iowa. August 5th, 1891, in the course of his business as station agent, plaintiff in error removed a box of merchandise from the car of his employer, the said railway company, across its platform into its freight house at said Brighton, Iowa. This box had been shipped at Dallas, Illinois, for Brighton, and had been brought by said railway and its connections from Dallas, Illinois, to Brighton, Iowa, under and in pursuance of a contract of carriage entered into and undertaken at Dallas, Illinois.

It was marked "Groceries," and with the address of a consignee at Brighton. It contained a jug of intoxicating liquor which was concealed. But plaintiff had information of its presence.

Now, plaintiff's act of removing this box from the car to the warehouse was in pursuance of said contract of shipment; was within its obligation and was a necessary part of its performance. "It has been held by the court and must be "regarded as the settled law of the state, that the liability of "a railway company as a common carrier of freight terminates, and its responsibility as a warehouseman commences "upon the arrival of the goods at the point of destination, "and depositing them at the warehouse of the company to "await the convenience of the consignee, when the common "carrier has transported the freight to its destination, and "done all of the acts pertaining to the carriage of the goods, "his liability as such common carrier ceases." *Independence Mills Company vs. B., C. R. & N. Ry. Co.*, 72 Iowa, 539.

For this act he was arrested on the charge of a violation of section 1553 of the Code of Iowa, viz:

"If any express company, railway company, or any agent "or person in the employ of any express company, or of any "common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey "between points, or from one place to another within this "state, for any other person or persons or corporation, any "intoxicating liquors, without first having been furnished "with a certificate from and under the seal of the county "auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which "it is to be conveyed from place to place, certifying that the "consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such "intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any "agent of such company, corporation, or person so offending, "shall, upon conviction thereof, be fined in the sum of one "hundred dollars for each offense, and pay costs of prosecu-

"tion, and the cost shall include a reasonable attorney fee to "be assessed by the court, which shall be paid into the county "fund, and stand committed to the county jail until such fine "and costs of prosecution are paid. The offense herein de- "fined shall be held to be complete, and shall be held to have "been committed in any county of the state, through or to "which said intoxicating liquors are transported, or in which "the same is unloaded for transportation, or in which said "liquors are conveyed from place to place or delivered. It "shall be the duty of the several county auditors of this state "to issue the certificate herein contemplated, to any person "having such permit, and the certificate so issued shall be "truly dated when issued, and shall specify the date at which "the permit expires as shown by the county records. *Pro-* "*vided*, however, that the defendant may show as a defense "hereunder by preponderance of evidence, that the character "and circumstances of the shipment and its contents were "unknown to him."

And on an agreed statement of facts showing as above that the transaction was one of interstate commerce, he was found guilty and judgment entered against him. Appeal was taken to the Supreme Court of Iowa, and May 8th, 1894, the Supreme Court, stating that "but two questions remain "to be considered; first, did the liquor when it first entered "this State become subject to the jurisdiction of our laws, or "would such jurisdiction only attach when the shipment had "reached its destination, viz: Brighton, Iowa, or when it was "delivered to the consignee? and, second, was the defendant, "in the removal of the liquor from the platform to the "freight depot, engaged in transporting or conveying it "within the meaning of the section (1553) quoted," did affirm the judgment of the trial court, holding that, by virtue of the Act of Congress of August 8th, 1890, known as "The Wilson Bill," viz: "all fermented, distilled, or other intoxi- "cating liquors or liquids transported into any state or terri- "tory, or remaining therein for use, consumption, sale or "storage therein, shall, upon arrival in such state or territory, "be subject to the operation of the laws of such state or ter-

"ritory, enacted in the exercise of its police powers, to the "same extent and in the same manner as though such liquids "or liquors had been produced in such state or territory, and "shall not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," the liquor became subject to the jurisdiction of the laws of Iowa when it first entered the State of Iowa; and, second, that the defendant in the removal of the liquor from the platform to the freight depot was engaged in carrying it within the meaning of Section 1553, in criminal violation of that section and became liable to its penalties.

We regard the above statement of the Supreme Court of Iowa concerning the questions involved to be correct, and as a fair statement of the questions we submit to this Court.

The error of the Supreme Court of Iowa complained of arises from its interpretation of the Act of Congress of August 8, 1890, which error we submit under the following assignment of errors:

ASSIGNMENT OF ERRORS.

I.

The Court erred in holding that the effect of the Act of Congress of August 8th, 1890, as follows:

"That all fermented, distilled, or other intoxicating liquors "or liquids transported into any state or territory or remain- "ing therein for use, consumption, sale or storage therein, "shall, upon arrival in such state or territory, be subject to "the operation and effect of the laws of such state or territory "enacted in the exercise of its police powers, to the same ex- "tent and in the same manner as though such liquids or "liquors had been produced in such state or territory, and "shall not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," is to render illegal or obnoxious to the operation of the criminal statutes of Iowa an act done in pursuance of a contract of transportation of an article of commerce from a point in another state to a point in the state of Iowa.

II.

The Court erred in holding that the said Act of Congress of August 8th, 1890, gave jurisdiction or authority to the sovereignty of Iowa to invalidate or impair by its statute a contract of transportation of an article of commerce from a point in another state to a point within the limits of the state of Iowa.

III.

The Court erred in holding that the liquor in question became subject to the operation of section 1553 of the Code of Iowa, before the act of transportation was completed and the contract of transportation performed according to its terms, said section 1553 being as follows, to-wit:

"If any express company, railway company, or any agent "or person in the employ of any express company, or of any

"common carrier, or any person in the employ of any com-
"mon carrier, or if any other person shall transport or con-
"vey between points, or from one place to another within
"this state, for any other person or persons or corporation,
"any intoxicating liquors, without first having been fur-
"nished with a certificate from and under the seal of the
"county auditor of the county to which said liquor is to be
"transported or is consigned for transportation, or within
"which it is to be conveyed from place to place, certifying
"that the consignee or person to whom said liquor is to be
"transported, conveyed or delivered, is authorized to sell such
"intoxicating liquors in such county. such company, cor-
"poration, or person so offending, and each of them, and any
"agent of such company, corporation, or person so offending,
"shall, upon conviction thereof, be fined in the sum of one
"hundred dollars for each offense and pay costs of prosecu-
"tion, and the cost shall include a reasonable attorney fee to
"be assessed by the court, which shall be paid into the county
"fund, and stand committed to the county jail until such fine
"and costs of prosecution are paid. The offense herein de-
"fined shall be held to be complete and shall be held to have
"been committed in any county of the state, through or to
"which said intoxicating liquors are transported, or in which
"the same is unloaded for transportation, or in which
"said liquors are conveyed from place to place or delivered.

"It shall be the duty of the several county auditors of this
"state to issue the certificate herein contemplated to any per-
"son having such permit, and the certificate so issued shall
"be truly dated when issued, and shall specify the date at
"which the permit expires as shown by the county records.
"*Provided*, however, that the defendant may show as a de-
"fense hereunder, by preponderance of evidence, that the
"character and circumstances of the shipment and its con-
"tents were unknown to him."

IV.

The Court erred in holding the defendant guilty of viola-
tion of said section 1553 of the Code of Iowa, as said section

can have no force or effect to forbid the performance of a legitimate contract of transportation of an article of commerce from a point in another state to a point in Iowa.

V.

The Court erred in holding that said section 1553 of the Code of Iowa was not repugnant to the Constitution and laws of the United States in so far as said section attempted to forbid the transportation of intoxicating liquor in the original package from the boundary of the state of Iowa to the destination of the same within said state without the certificate in said section provided for, said transportation within the State of Iowa constituting a part of an interstate journey, the initial point of which was without the state of Iowa.

The Plaintiff in Error presents the following Points:

1. The article which plaintiff is convicted of transporting is by the consent and definition of all commercial nations an article of commerce.

2. His act was in the course of his employment as a servant of a common carrier for hire, and was a regular and necessary part of the performance of a contract made in Illinois for the transportation of goods from a point in the State of Illinois to a point in the State of Iowa.

3. This contract of transportation the common carrier was obliged to undertake (*a*) by the law of Illinois, *Bowman vs. Railway Co.*, 125 U. S., pp. 484–486, and (*b*) by the laws of Congress. The Act to Regulate Commerce, § 3, approved February 4, 1887.

4. The jurisdiction of Congress to regulate such a transaction is exclusive.

5. (*a*) The subject matter of such a contract of transportation cannot be made subject to the operation of the laws of a state enacted in the exercise of its police power, so long as its character or condition as a subject of interstate commerce continues, without the consent of Congress.

(*b*) The police laws of the state cannot operate upon the act of transportation from another state to a point within its own territory, to forbid or to regulate, as such regulation is vested by the Constitution exclusively in Congress.

6. "The power to regulate commerce among the states "was vested in Congress to insure uniformity of regulation "against conflicting and discriminating state legislation." 125 U. S., 485.

Since if the states may be permitted to exercise this power the regulations may be various and conflicting, Congress may not permit it to the states, but must itself exercise this power if it is to be exercised at all.

7. Even if Congress may by law expressly permit the laws of the states enacted in the exercise of their police power to prevent or to variously regulate traffic within their territory in certain specified subjects of interstate commerce, it may not permit such laws to prevent or to regulate the performance of contracts for the transportation of such articles, legitimately undertaken.

8. From the history of the enactment of the law of Congress of August 8, 1890, and from the natural interpretation of the language of that law; it appears that Congress did not intend to permit the various police laws of the states to affect that element of commerce among the states which consists in the transportation of merchandise.

ARGUMENT.

I.

1. The article which the plaintiff in error is convicted of transporting is, by the consent and definition of all commercial nations, an article of commerce.

It has been declared to be a legitimate article of commerce in all the decisions of this court wherein the discussion of its nature was relevant. *Leisey vs. Hardin*, 135 U. S., 110; opinion of Mr. Justice CATRON, License cases, 5 Howard, 599.

2. Its transportation from a foreign state into one of the United States, or from one of the United States into another, has been held by this court to be a transaction of international or interstate commerce, and therefore its permission, or prohibition, or regulation within the exclusive jurisdiction of the national congress, under Sec. 8, of Art. I, of the national constitution.

In the case of *Pierce vs. New Hampshire*, 5 Howard, 504–554, in the absence of regulation by Congress, regulation of such commerce by a state was upheld. This decision was overruled in the case of *Leisey vs. Hardin*, 135 U. S., 188, in this language: "The authority of *Pierce vs. New Hamp-*
"*shire*, in so far as it rests on the view that the law of New
"Hampshire was valid because Congress had made no regula-
"tion on the subject, must be regarded as having been dis-
"tinctly overthrown by the numerous cases hereinafter
"referred to:"

Bowman vs. Ry. Co., 125 U. S., 507.
Case of *State Frt. Tax*, 15 Wallace, 232.
Henderson vs. Mayor of New York, 92 U. S., 259.
R. R. Co., vs. Husen 95 U. S., 465.
Cook vs. Pennsylvania, 97 U. S., 566.
Wabash & St. Louis Ry. vs. Illinois, 118 U. S., 557.
Robbins vs. Shelby Taxing District, 120 U. S., 489.
Welton vs. Missouri, 91 U. S., 275.
Walling vs. Michigan, 116 U. S., 446.

Bowman vs. Chicago &c. Ry. Co., 125 U. S., 479: "It can "not be doubted that the law of Iowa, regarded as a rule for "the transportation of merchandise, operates as a regulation "of commerce among the states;" and page 493, "The statute "of Iowa under consideration (Sec. 1553) falls within this "prohibition. It is not an inspection law. It is not a "quarantine or sanitary law. It is essentially a regulation of "commerce among the states within any definition hereto-"fore given of that term or which can be given."

The article in question, a package of intoxicating liquor, being an article of commerce, and its transportation from a shipper in Illinois to a consignee in Iowa being an act of commerce between those two states, Congress had jurisdiction over the article so long as it was the subject of such commerce, and jurisdiction to permit, to forbid, or to regulate its transportation from the point of shipment in one state to the completion of its transportation in the other in pursuance of the contract of carriage, and this jurisdiction was exclusive.

Bowman vs. Chicago &c. Ry. Co., 125 U. S., 485, citing *County of Mobile vs. Kimball*, 102 U. S., 702.

"Commerce with foreign countries and among the states, "strictly considered, consists in intercourse and traffic, includ-"ing in these terms navigation and the transportation and "transit of persons and property, as well as the purchase, "sale, and exchange of commodities. For the regulation of "commerce as thus defined there can be only one system of "rules applicable alike to the whole country; and the "authority which can act for the whole country can alone "adopt such a system. Action upon it by separate states is "not, therefore, permissible." And *Hall vs. DeCuir*, 95 U. S., 485–88: "Uniformity in the regulation by which he, "the carrier of passengers, is to be governed from one end to "the other of his route is a necessity in his business, and to "secure it, Congress, which is untrammeled by state lines, has "been invested with the exclusive legislative power of deter-"mining what such regulation shall be."

Leisey vs. Hardin, 135 U. S., 112. "But the transporta-

"tion of passengers or of merchandise from one state to "another is, in its nature, national, admitting of but one regu- "lating power, and it was to guard against the possibility of "commercial embarrassments which would result if one state "could, directly or indirectly, tax persons or property passing "throught it, or prohibit particular property from entrance "into the state, that the power of regulating commerce "among the states was conferred upon the general govern- "ment."

"If in the present case," said Mr. Justice MATTHEWS in the Bowman case, "the laws of Iowa (Sec. 1553) operated upon "all merchandise sought to be brought from another state "into its limits, there could be no doubt it would be a regu- "lation of commerce among the states," and he concludes that this must be so, though it applied only to one class of articles of a particular kind.

State Freight Tax Case, 15 Wallace, 279. "* * * the "rule has been asserted with great clearness that whenever "the subjects on which a power to regulate commerce is "asserted are in their nature national, or admit of one "uniform system or plan of regulation, they may justly be "said to be of such a nature as to require exclusive legisla- "tion by congress, and surely transportation of passengers or "merchandise through a state, or from one state to another, "is of this nature. It is of national importance that over that "subject there should be but one regulating power, for if one "state can directly tax persons or property passing through "it, or can tax them indirectly by levying a tax upon their "transportation, every other may, and thus commercial inter- "course between states remote from each other may be des- "troyed. The produce of western states may thus be "effectually excluded from eastern markets, for though it "might bear the imposition of a single tax, it would be "crushed under the load of many. It was to guard against "the possibility of such commercial embarrassment, no doubt, "that the power of regulating commerce among the states "was conferred upon the federal government."

It seems settled that the states may not directly by taxa-

tion, either of the article of commerce or by levying a tax upon its transportation, or by any legislation, directly regulate commerce between the states; nor can they, in the exercise of their police power, indirectly regulate such commerce by excluding from the class of commercial commodities any articles which are the subjects of lawful commerce and sale in the civilized world and recognized as such by the laws of the nation.

The opinion of Mr. Justice CATRON in the case of *Pierce vs. New Hampshire*, has been frequently cited with approval by this court, in the review of this Iowa statute in the Bowman case, 125 U. S., 429, as "very much to the point."

LICENSE CASES, FIFTH HOWARD U. S., 599.

JUSTICE CATRON'S OPINION.

"The article in question was introduced from one State "directly into another, and the first question is: Was it a "subject of lawful commerce among the states, that Con- "gress can regulate? That ardent spirits have been for "ages, and now are, subjects of sale and of lawful commerce, "and that of a large class, throughout a great portion of the "civilized world, is not open to controversy; so our commer- "cial treaties with foreign powers declare them to be, and so "the dealing in them among the states of this Union recog- "nizes them to be. But this condition of the subject matter "was met by the State decision on the ground, and on this "only, that the State might pass health and police laws which "would, to a certain extent, affect foreign commerce and "commerce between the states; and that the statute (of New "Hampshire) was a regulation of that character, and consti- "tutional.

"This was the charge to the jury, and on it the verdict "and judgment are founded, which the State court of last "resort affirmed. The law and the decision apply equally to "foreign and to domestic spirits, as they must do on the "principles assumed in support of the law. The assumption "is, that the police power was not touched by the constitu- "tion, but left to the states as the constitution found it.

"This is admitted; and whenever a thing, from character or "condition, is of a description to be regulated by that power "in the State, then the regulation may be made by the State, "and Congress cannot interfere. But this must always "depend on facts, subject to legal ascertainment, so that the "injured may have redress. And the fact must find its sup- "port in this, whether the prohibited article belongs to, and "is subject to be regulated as part of, foreign commerce or of "commerce among the states. If, from its nature, it does not be- "long to commerce, or if its condition, from putrescence or other "cause, is such when it is about to enter the state that it no "longer belongs to commerce, or, in other words, is not a "commercial article, then the State power may exclude its "introduction. And, as an incident to this power, a State "may use means to ascertain the fact. And here is the limit "between the sovereign power of the State and the federal "power. That is say, that which does not belong to com- "merce is within the jurisdiction of the police power of the "State; and that which does belong to commerce is within "the jurisdiction of the United States. And to this limit "must all the general views come, as I suppose, that were "suggested in the reasoning of this court in the cases of "*Gibbons vs. Ogden*, *Brown vs. The State of Maryland*, and "*New York vs. Miln*.

"What, then, is the assumption of the State court? "Undoubtedly, in effect, that the State had the power to "declare what should be an article of lawful commerce in "the particular State; and, having declared that ardent "spirits and wines were deleterious to morals and health, "they ceased to be commercial commodities there, and that "then the police power attached, and consequently the powers "of Congress could not interfere. The exclusive State "power is made to rest, not on the fact of the state or con- "dition of the article, nor that it is property usually passing "by sale from hand to hand, but on the declaration found in "the State laws, and asserted as the State policy, that it shall "be excluded from commerce. And by this means the "sovereign jurisdiction in the State is attempted to be

"created, in a case where it did not previously exist.

"If this be the true construction of the constitutional pro-"vision, then the paramount power of Congress to regulate "commerce is subject to a very material limitation; for it "takes from Congress, and leaves with the State, the power to "determine the commodities, or articles of property, which "are the subjects of lawful commerce. Congress may regu-"late, but the States determine what shall or shall not be "regulated.

"Upon this theory, the power to regulate commerce, "instead of being paramount over the subject, would become "subordinate to the State police power: for it is obvious that "the power to determine the articles which may be the subject "of commerce, and thus to circumscribe its scope and opera-"tion, is, in effect, the controlling one. The police power "would not only be a formidable rival, but, in a struggle, "must necessarily triumph over the commercial power, as "the power to regulate is dependent upon the power to fix "and determine upon the subjects to be regulated.

"The same process of legislation and reasoning adopted by "the State and its courts could bring within the police power "any article of consumption that a State might wish to "exclude, whether it belonged to that which was drank, or "to food and clothing; and with nearly equal claims to "propriety, as malt liquors and the produce of fruits other "than grapes stand on no higher grounds than the light "wines of this and other countries, excluded, in effect, by the "law as it now stands. And it would be only another step "to regulate real or supposed extravagance in food and cloth-"ing. And in this connection it may be proper to say, that "the three States whose laws are now before us had in view "an entire prohibition from use of spirits and wines of every "description, and that their main scope and object is to "enforce exclusive temperance as a policy of State, under the "belief that such a policy will best subserve the interests of "society; and to this end, more than to any other, has the "sovereign power of these States been exerted; for it was "admitted, on the argument that no licenses are issued and

"that exclusion exists, so far as the laws can produce the "result,—at least, in some of the States,—and that this was "the policy of the law. For these reasons, I think the case "cannot depend on the reserved power in the State to regu- "late its own police.

"Had the gin imported been an import from a foreign "country, then the license law prohibiting its sale by the "importer would be void. The reasons for this conclusion "are given in my opinion on the case of *Thurlow vs. The Com- "monwealth of Massachusetts*, and need not be repeated, and "are founded on the case of *Brown vs. The State of Maryland*. "The next inquiry is, did it stand on the foot of an import, "coming, as it did, from another State? If it be true, as the "State courts held it was, that Congress has the exclusive "power to regulate commerce among the States (the States "having none,) and the gin introduced being an article of "commerce, and the State license law being a regulation of "commerce (as it was held by this court to be in the case of "*Brown vs. The State of Maryland*,) then the State law is "void, because the State had no power to act in the matter "by way of regulation to any extent."

II.

It is thus settled that the application of Section 1553 to this commerce between Iowa and another state is a regulation of commerce. It is an exercise of the police power of the state of Iowa over this commerce, and is therefore prohibited, because it is a regulation of commerce between states and an exercise of the police power of the state of Iowa, "over a "subject confided exclusively to congress by the federal con- "stitution." It necessarily follows that the Act of Congress of August 8, 1890, the Wilson Bill, permitting the exercise of this police power, delegates power to regulate commerce in regard to a certain commercial article. It "removes an "impediment to the enforcement of the law" of Iowa, an impediment not created by any law of Congress, or by the silence of Congress, but by the terms of the federal constitution.

It will not be contended that Congress might thus make, subject "upon arrival in any state or territory, to the opera-"tion of the laws of that state enacted in the exercise of "its police power," all subjects of commerce between the states, and thus by one sweeping act of conveyance transfer and delegate to the several states its power to regulate commerce. This would be an abdication of authority, a repudiation of the duty imposed on Congress by the constitution, and there is no logical reason within the reach of our understanding which makes it competent for Congress to select any one subject of commerce and exclude it from the operation of the rule prescribed by the constitution. We are unable, then, to perceive any legal justification for the permission that any police laws of any state shall be effectual upon any recognized article of commerce. Interstate commerce is within the exclusive jurisdiction of Congress and exempt from the local jurisdiction of the state. Every subject of it equally with every other is within this exclusive jurisdiction, and exempt from the local jurisdiction. It is only when it ceases to be a subject of interstate commerce that the local jurisdiction can control, and it does not cease to be such subject of commerce except as a commercial fact, and not as a result of statutory enactment. If the supposed moral necessities of one state may justify premission to exclude liquor from its territory, why may not the race prejudices of another justify the permission to exclude pork from its territory, or the commercial greed of another justify permission to exclude the cotton or corn of all others from its market or its soil? Can the definition of commerce be left to the separate states? In fact, is the definition of commerce subject even to the will of Congress? Can either the separate states, or can Congress itself enlarge, abridge or amend the Federal Constitution by statutory declaration of what shall or shall not be articles of commerce? Are not the limits of this term set by the sense and concurrence of the commercial world, to be ascertained and announced only by the authentic decision of this court?

If this package of liquor which this plaintiff handled was

not an article of commerce between states, and if this act of handling was not an act of commerce, Sec. 8 of Art. I of the Constitution has no application, and no permission of the State of Iowa is necessary or pertinent to enforce Sec. 1553 against him, and the Act of Congress of August 8, 1890, is supererogatory and impertinent. But if it was an article of commerce between states, and if plaintiff was engaged in an act of commerce between Illinois and Iowa, it was such an article and such an act as was intended by the framers of the Constitution to be under the exclusive control of Congress. They made and anticipated no distinction among the subjects of commerce between the states. All these are equally within the national jurisdiction. The line of separation was drawn between commerce between the states, and commerce within each state. This was the only line and the only distinction, and this line remains.

The Constitution, in Sec. 10 of Art. I, specifies certain things which the states may not do without the "consent of Congress," and by implication provides that any of these specified things may be done upon the "consent of "Congress," and it seems to us that these include all the cases in which the "consent of Congress" is necessary or useful. In all other matters, the question is one of legislative jurisdiction. The limits of that jurisdiction must finally be ascertained and declared by this court. If the state has jurisdiction, the consent of Congress is not a matter of concern. It is valueless because unnecessary. If it has not jurisdiction, the consent of Congress is still not a matter of concern; it is valueless because ineffectual.

"It does not admit of argument that Congress can neither "delegate its own powers nor enlarge those of states." *In re Rahrer*, 140 U. S., 560.

III.

Congress may not permit the police laws of each state to take effect upon commerce or upon the subjects of commerce between the states, because there can be no assurance that the operation of such laws would be uniform.

There can be no constitutional legislation by Congress

which does not, in its terms or by necessary implication, set forth the will of Congress. If any legislation is thought by Congress necessary to control interstate traffic or its subjects, that necessary legislation must be the exclusive act of Congress. Congress must in terms forbid or permit, must prescribe or define the regulation, must affix the fines and penalties, and such regulation must be at all times under the control of the enacting power, and its enforcement must be committed exclusively to the executive officers of the national government.

The Act of August 8, 1890, in effect delegates to the separate states power not to adopt or to reject certain regulations in terms adopted and set forth by Congress; but in regard to this subject matter of commerce it gives a free warrant, a blank commission, to every state to legislate as it will. It permits forty-five different systems of regulation of commerce in liquor, and these not permanent and stable, but surely and constantly changing, according to the whim and caprice of local opinion.

We are unable to imagine a more entire and effectually hurtful delegation of power than that which permits Kansas and Iowa to forbid as crime what Illinois or Missouri may protect and encourage as commerce, which permits to be punished as a misdemeanor, or even as a felony, to-day, the useful trade of yesterday, which makes legitimate and proper commerce a question of geography and a matter of sectional and ephemeral prejudice.

That these are not forebodings of fancy, but the fair suggestions of real and practical difficulties and obstructions to the business of the country, is apparent upon passing observation of the multiplicity and diversity of the state liquor laws now in force, and brief recollection of the experimental legislation of the past. In Iowa we have endured a free and unlimited distillery; then we prohibited the use of all American liquor except for mechanical, etc., purposes, but permitted the importation of foreign liquor; next we permitted the unlimited sale and drinking of beer, and of wine made from Iowa grapes—not preventing, but protecting and promot-

ing intemperance, provided it begun at home,—and so on, with almost biennial deviations, through total prohibition to the present sale of indulgences called the Mulct law, by which in one township or precinct on certain conditions prosecution for violation of the liquor law (still proclaimed to be in force) is by law suspended. The Wilson Bill attempts to place no limitation upon this disorderly exercise of the police power; there is no check to its infinite variety; each state prescribes its own procedure and fixes its own pains and penalties.

In *County of Mobile vs. Kimball*, 102 U. S., 702, cited in *Bowman vs. Ry. Co.*, 125 U. S., 485, this court holds: "Com-"merce with foreign countries and among the states, strictly "considered, consists in intercourse and traffic, including in "these terms navigation and the transportation and transit "of persons and property, as well as the purchase, sale and "exchange of commodities. For the regulation of commerce "as thus defined there can be only one system of rules appli-"cable alike to the whole country; and the authority which "can act for the whole country can alone adopt such a sys-"tem." On page 486, "The law of the state of Iowa (Sec. "1553), while it professes to regulate the conduct of carriers "engaged in transportation within the limits of that state, "nevertheless materially affects, if allowed to operate, the "conduct of such carriers, both as respects their rights and "obligations in every other state into or through which they "pass in the prosecution of their business of interstate trans-"portation. In the present case the defendant is sued as a "common carrier in the State of Illinois, and the breach of "duty alleged against it is a violation of the law of that state "in refusing to receive and transport goods which, as a com-"mon carrier, by that law, it was bound to accept and carry. "It interposes as a defense a law of the State of Iowa, which "forbids the delivery of such goods within that state. Has "the law of Iowa any extra-territorial force which does not "belong to the law of the State of Illinois? If the law of "Iowa forbids the delivery, and the law of Illinois requires "the transportation, which of the two shall prevail? In view

"of this necessary operation of the law of Iowa, if it be valid, "the language of this court in the case of *Hall vs. DeCuir*, "95 U. S., 485–488, is exactly in point. It was there said: "'But we think it may safely be said that state legislation "which seeks to impose a definite burden upon interstate com- "merce, or to interfere directly with its freedom, does en- "croach upon the exclusive power of Congress. The statute "now under consideration, in our opinion, occupies that posi- "tion. It does not act upon the business through the local "instruments to be employed after coming within the state, "but directly upon the business as it comes into the state "from without, or goes out from within. While it purports "only to control the carrier when engaged within the state, "it must necessarily influence his conduct to some extent in "the management of his business throughout his entire voy- "age. * * * It was to meet just such a case that the "commercial clause in the constitution was adopted. The "river Mississippi passes through or along the borders of ten "different states, and its tributaries reach many more. The "commerce upon these waters is immense, and its regulation "clearly a matter of national concern. If each state was at "liberty to regulate the conduct of carriers while within its "jurisdiction, the confusion likely to follow could not but "be productive of great inconvenience and unnecessary hard- "ship. Each state could provide for its own passengers and "regulate the transportation of its own freight, regardless of "the interests of others. Nay, more; it could prescribe rules "by which the carrier must be governed within the state, in "respect to passengers and property brought from without. "On one side of the river, or its tributaries, he might be re- "quired to observe one set of rules, and on the other, another. "Commerce can not flourish in the midst of such embarrass- "ments. * * * Uniformity in the regulations by which "he (the carrier) is to be governed from one end to the other "of his route is a necessity in his business, and to secure it, "Congress, which is untrammeled by State lines, has been "invested with the exclusive legislative power of determining "what such regulation shall be.'"

IV.

The Act of Congress of August 10, 1890, does not permit the police law of Iowa to operate upon that branch of interstate commerce which consists in transportation, or to avoid or impair the contract of transportation.

Commerce is the "exchange of merchandise on a large "scale between different places." Under any proper definition it has two branches or essential elements, namely: transportation and exchange or sale. "The very purpose and "motive of that branch of commerce which consists in trans-"portation is that other and consequent act of commerce "which consists in the sale and exchange of the commodi-"ties transported." *Bowman vs. Ry.*, 125 U. S., 499.

"It is manifest, whether as an abstract proposition or "practical measure, that a prohibition to import is one thing, "while a prohibition to sell without license is another and "entirely different. The first would operate on foreign com-"merce on the voyage; the latter affects only the internal "business of the state after the foreign importation is com-"pleted and on shore."—JUSTICE WOODBURY, 5 How., 619; License cases.

The contract of transportation from Dallas, Illinois, to Brighton, Iowa, was a contract of commerce between states, legitimate and obligatory upon the parties, subject to no restrictions, except such as may have been imposed by congress under its exclusive power granted in paragraph 3, Sec. 8, Art. I, of the national Constitution.

The power to impair the obligation of this contract did not inhere in the sovereignty of the State of Iowa, and the performance of the contract of carriage could not be obstructed by the operation of its laws.

It was held by this court, following many precedents, in the *Bowman* case, 125 U. S., that the power to regulate commerce is vested by the Constitution exclusively in Congress, that a state may not prohibit the importation into its territory of an article of commerce, and as a corollary to that doctrine it was held in the *Leisey* case, 135 U. S., that a state may not in the exercise of its own sovereignty prevent the

completion of the interstate commercial transaction, or frustrate its purpose by prohibiting the sale of the imported article in its original packages. But in the course of its decision, on page 123, the court used the following language: "But, notwithstanding it is not vested with supervising "power over matters of local jurisdiction, the responsibility "is upon Congress, so far as the regulation of interstate "commerce is concerned, to remove the restriction upon the "state in dealing with imported articles of trade within its "limits which have not been mingled with the common mass "of property therein. * * *" Page 124, "Under our "decision in *Bowman vs. Chicago Ry. Co.*, they had the right "to import this beer into that state (Iowa), and in the view "which we have expressed they had the right to sell it, by "which act alone it would become mingled in the common "mass of property within the state. Up to that time we hold "that in the absence of congressional permission to do so, the "state had no power to interfere by seizure or any other "action in prohibition of importation and sale by the foreign "or non-resident importer." Upon the announcement of this decision, appeal was promptly made to Congress for permissive legislation, and in August, 1890, the "original package bill" was passed. The "original package" was the source as well as the subject of this permissive legislation by Congress. The decision in the Bowman case was only a reaffirmation of the settled doctrine that that element of commerce between the states which consists in transportation is within the exclusive jurisdiction of Congress for its regulation; that contracts of transportation from one state into another state are not subject to state control or interference, and that the power to control or to regulate such contracts can not be delegated to the state by Congress, 125 U. S., 484, and *Hall vs. DeCuir*, 95 U. S., 485–8. To this extent that decision was accepted by the intelligent legal judgment of the country, but what had been urged as the resultant doctrine, namely, that the subject of the contract, the goods themselves, should not be subject to the operation of the police laws of the importing state until after sale within that

state, had always been in dispute, and denied by high authority, so that the decision in the Leisy case to that effect came as a surprise and disappointment, not only to those interested in the particular matter of temperance reform, but also to that large number of the people who believe that the police power is a real and necessary power with exclusive control in matters of local concern. We quote the words of the advocates of the Act of August 8, 1890, always named in the Record "The Original Package Bill," not only to set forth the situation, but to show what was supposed by senators and members of congress to be the intention of the bill.

"Not only must the property be consigned, but must be "once sold before interstate commerce ceases and commerce "within the state begins. *It is this addition which has made "the trouble*, and which was unexpected."—Congressional Record, 1890, p. 7427.

"The necessity for the legislation proposed by the pending "bill arises out of the decision of the Supreme Court of the "United States in the case of *Leisy vs. Hardin*. The Court "in that case held in substance that articles of commerce "transported from one state to another do not become a part "of the common mass of property within the state to which "they are transported, and subject to the laws of such state, "until they have been sold, or otherwise disposed of by the "importer. * * * that the right of the state by legisla-"tion to any way touch or affect property imported to it can "only be exercised after the importer has disposed of it in "some way, by sale or otherwise."

"The proposition of this bill is to draw the line between "government and state control over property thus imported "at the point where the property is transported into the par-"ticular state and there held or offered for sale, instead of at "the point where the property has been sold or disposed of "by the importer."—Congressional Record, pages 7489–90.

And this view of the purpose and scope of the Act proposed was not questioned in all the debates in either house, so far as we have been able to learn, by supporter or opposer. It was intended only to permit the subject matter of the con-

tract of carriage as an article of sale or exchange to become subject to the operation of the laws enacted in the exercise of the police power of a state immediately upon the performance of the contract of carriage, and not before.

The language of the Act of Congress does not permit interference with the act of transportation—much less the characterization and punishment of such act as crime. There was a single and definite intention, apt words were used to express it, and the words used cover and include all the intention. If it had been intended to subject the contract of transportation to the operation of the state laws, some provision like this would have been added: "And any contract "of transportation of such liquor into any state wherein the "traffic in liquor and transportation of liquor produced within "its territory is by its laws forbidden, shall be void."

The Act of Congress divests liquor transported from one state into another of its exemption as an article of interstate commerce from operation of the liquor laws of the state at a certain time, which time is pointed out and defined by the words "transported into" and "upon arrival in such state."

It needs no refinement of definition or nicety of analysis to perceive that "transported" is in the past tense and describes a completed act, and that "into" means not "to," but a point within the boundaries of the state. The state line must have been crossed before there has been transportation into; goods must have been brought not "to" but across the line before the local laws are permitted to affect them.

How far across? We think the answer reasonably obvious; "to the end of the carry." The contract of transportation is a unit, valid and obligatory (obligatory on the carrier to be entered into in the state where made, as well as in the state where its performance is to be finished).

Valid when made, it continues valid and obligatory into the state; if valid into the state for a rod, it is valid to the center of the state; if valid to Burlington, it is valid to Brighton station; if valid to Brighton it is not invalidated by stops at intervening stations. It is no less legal for those stops, and would have been no more legal had they not been

made. In short, if the contract is valid part way, it is valid the whole way; if the carrier may legally approach, he may legally reach his destination. If he may not be hindered or charged with crime for setting the liquor down within the state sixteen feet from its boundary, he may not be charged with crime for carrying it the last sixteen feet of its course from the car to the freight house.

It would have been as easy to say "upon arriving at" the boundary of the state, if Congress had intended such largeness of permission, but, intending to permit only what it might permit constitutionally, to permit all that was necessary and no more than was necessary to enable a state to carry out its local policy, Congress defined its permission by the use of the common and well-understood phrase, "upon arrival in." This marks the "period of time earlier" than that at which the imported goods became mingled with the general mass of property in the state. The word "arrival" does not apply to a stage in a journey, but to the end of a journey; it denotes a finishing of the course; it means the getting to shore.

The words, then, "upon arrival in" do not mean upon "arriving at" Iowa, which might, without further explanation, be interpreted at the border of Iowa, but arrival at some place in Iowa, and not at a vague, uncertain somewhere, but at a definite place—the place intended; to which the course had been directed, the end of the journey planned, the destination. This is the fair interpretation of the language deliberately used. And to make clear its intention, Congress indicates the evil to be remedied, the difficulty to be removed, and limits and sums up the permission granted in the words which close the act: "And shall not be exempt therefrom "by reason of being introduced in original packages, or "otherwise."

By this Act, Congress removed all impediment to the free action of the police power of the State that it might remove under the Constitution. It does not in terms, or by implication or inference, affect the contract of transportation, because that would be an attempt not only unconstitutional

but futile to give the police laws of a state force and effect beyond the border of the state. But the power of the State to protect itself, to enforce its own local policy in behalf of good morals is freed by this Act of Congress from the hindrance and obstruction inherent in free commerce between the states in the article of liquor, as it permits the police power to lay its hands on the thing transported immediately upon the performance of the contract of transportation. It thus grants to the State, so far as its control of liquor is concerned, all that was claimed for it in the opinion of a great political party, in the arguments of learned lawyers, and of wise dissenting judges, and even in the judgment of the supreme court in the case of *Pierce vs. New Hampshire*; but it grants and can legally grant no more. And even if the right to grant further freedom to the State in this behalf was beyond question, even if it did not involve the abdication of the exclusive authority intrusted to Congress by the constitution, and a denial of the duty imposed only on Congress by that instrument, such grant could not be urged as necessary, for while the State's police power may not forbid the transportation, it may prevent the sale which is the sole purpose of the transportation; while it may not forbid the contract, it may effectually prevent it by removing all motives for its undertaking.

If Congress has, by the Act of August 8, 1890, permitted the laws enacted in the exercise of the police power of the states to operate against the act of importation and the agents employed; if it has limited or transferred its constitutional power to prescribe or to declare what contracts of transportation between states shall be lawful for parties to enter into and to perform, it is plain that it has in effect, and as a practical consequence, delegated to the states power not only to regulate and forbid interstate commerce in liquor, but to obstruct and to limit, if not to destroy, all commerce between the states. If the State may prevent importation, it may adopt and enforce its own measures to prevent. It may halt the carrier at the boundary of the state and search his freight. If the State so wills, no train can pass the

border line until its goods are approved and permission to proceed is granted by the searching officer. Clean hands are not needed to set the machinery of police laws in motion. At the will of any one competent to file an information, whether he be responsible or not, whether a citizen of supposed public spirit or a meddler and informer, whether moved by zeal for pure morals or hate of a railroad company, the cars of the carrier must be overhauled and the general business of the state and of other states delayed and injured. No reason can be suggested why the carriage of liquor shipped in Boston for San Francisco across the state of Iowa may not be prevented, and the attempt of the carrier to transport it punished as crime. The same moral sense which convicted this plaintiff would not quietly suffer the soil of Iowa to be used as a highway for the advance of this moral enemy upon its western neighbors. Such construction of this Act of Congress makes it a source of discord between states, of danger and disaster to the business of the country, and a measure of constant tyranny and menace to the carriers of commerce among states. It becomes truly not a delegation of power to regulate commerce; but rather a license to harass and hinder commerce, to sink rocks in the entrance to harbors, and to set snags in the channel of the Mississippi. The serious disturbance of business interests, the grave conflicts of state jurisdiction and state policy, the obstruction of commercial intercourse foreseen by the framers of the Constitution, and the avoidance of which led most persuasively to its ordaining and establishment, would be aggravated and intensified if each state might prescribe its terms and conditions for the importation of any commodity of commerce, whether it be liquor or whether it be corn.

"In view of the commercial anarchy and confusion that "would result from the diverse exertions of power by "the several states of the Union, it can not be supposed that "the Constitution or Congress has intended to limit the free-"dom of commercial intercourse among the people of the "several states." *Bowman* case, 125 U. S., 494.

Nothing in the language of this Court in the cases cited

justifies the assumption of the courts of Iowa that the grant of permission by Congress for the state law to operate upon the thing imported, permitted its interference with the act of importation.

"Whenever the law of the state amounts essentially to a "regulation of commerce with foreign nations or among the "states, as it does when it inhibits indirectly the receipt of "an imported commodity, *or its disposition before it has "ceased to become an article of trade between one state and "another*, it comes in conflict with a power which in this "particular has been exclusively vested in the general govern- "ment and is therefore void." *Leisy vs. Hardin*, 135 U. S., 123.

"Congress has not attempted to delegate the power to "regulate commerce * * *, it has taken its own course and "made its own regulation applying to those subjects of inter- "state commerce one common rule, whose uniformity is not "affected by variations in state laws affecting such property.

"The power over interstate commerce is too vital to the "integrity of the nation to be qualified by any refinement of "reasoning, the power to regulate is solely in the general "government, and it is an essential part of that regulation "to prescribe the regular means for accomplishing the intro- "duction and incorporation of articles into and with the mass "of property in the country or state." (12 Wheat., 448.) "No reason is preceived why, if Congress choses to provide "that certain designated subjects of interstate commerce shall "be governed by a rule which divests them of that character "at an earlier period of time than would otherwise be the "case, it is not within its competency to do so." *In re Rahrer*, 140 U. S., 562; and page 564: "Congress did not "use terms of permission to the state to act, but simply "removed an impediment to the enforcement of the state "laws in respect to imported packages in their original con- "dition, created by an absence of specific utterance on its "part. *It imparted no power to the state not then possessed*, "but allowed imported property to fall at once upon arrival "within the local jurisdiction."

"It is enough to say that the power to regulate or forbid "the sale of a commodity after it has been brought into a "state does not carry with it the right and power to prevent "its introduction by transportation from another state." *Bowman* case, 125 U. S., 500.

The existence of two elements in commerce and the distinction between them is constantly kept in view. It is not held that the transportation of liquor is no longer an act of commerce, or that the regulation of its transportation from one state into another is not still a regulation of commerce. Only because it was a subject of interstate commerce was permission of Congress required for the operation upon it of the police power of the State. And only upon the subject of commerce was this permission granted.

So long as it could be sold and mingled with the mass of property within the state, the policy of moral reform in certain states was thwarted and the laws to that end nullified. It was found necessary to forbid the sale, and Congress thought it wise to permit the prohibition of the sale. So much was needed and no more, and so much and no more was granted.

As the habitable territory of this country is enlarged, as new states are added and population multiplies, the interests of the people grow more numerous and diverse and powerful, and with them spring up rivalries and prejudices; there must be local policies and local jealousies. It must needs be that offences come. In this case the zeal with which the enforcers of the local policy of Iowa laid hands not upon the obnoxious article of commerce but upon the carrier, the confidence with which the courts of Iowa assumed that the power of the general government had been postponed in this matter of general concern to the power of the State, shows there is no danger that the spirit of Americanism will too widely or too strongly, or too soon prevail; that there will be too general or too intense conscious loyalty to the national government. It is still needful that the people should upon every proper occasion be reminded of their citizenship, that they should be brought to realize the omnipres-

ence throughout its vast territory of the national authority, and should gain an abiding sense of the beneficent influence of its constant control in their political and commercial relations.

The plea of the plaintiff in error is that his act was in the course of business between the states of Illinois and Iowa, and was in its legal character an act exclusively of national concern; that the state legislature had no jurisdiction to give his act the character of crime, or the state court jurisdiction to condemn him. And he prays that its judgment be set aside.

THOMAS HEDGE,
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J. W. BLYTHE,
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No. 21.

Brief of Matter for P. E.

Filed Oct. 8, 1897.

15,648.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

21

T. H. RHODES,
Plaintiff in Error,
vs.
THE STATE OF IOWA,
Defendant in Error.

In Error to the Supreme Court of Iowa.

ARGUMENT FOR PLAINTIFF IN ERROR.

ROBERT MATHER,
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1897.

T. H. RHODES,
Plaintiff in Error,
vs.
THE STATE OF IOWA,
Defendant in Error.

In Error to the Supreme Court of Iowa.

STATEMENT.

On the 4th day of August, 1891, the Dallas Transportation Company delivered to the Chicago, Burlington and Quincy Railroad Company, at Dallas, Illinois, for transportation to Brighton, Iowa, a wooden box, which was represented to contain groceries, but which actually contained a jug of intoxicating liquor. The railroad company received the box and receipted for it as a through shipment, carrying the same on a through bill of lading reading from Dallas, Illinois, to Brighton, Iowa, over the lines of the Chicago, Burlington and Quincy Railroad Company from Dallas, Illinois, to Burlington, Iowa, and from the latter point to Brighton, Iowa, over the line of the Burlington and Western Railroad Company. The latter company carried the box to its destina-

tion under said original consignment, and it was delivered at Brighton, Iowa, on the platform on the outside of the Burlington and Western depot by the trainmen of the last named company on August 5, 1891. The plaintiff in error was the station agent of the Burlington and Western Railroad Company at Brighton. Immediately after the placing of the box on the platform by the trainmen, the plaintiff in error, complying with the directions of his employer, carried the box across the platform, a distance not to exceed six feet, and placed it within the depot building at the Brighton station. About one hour later the box was seized by a constable under a search warrant issued by a justice of the peace on an information filed before him that intoxicating liquors improperly marked were in said depot building. As a result of subsequent proceedings before the justice of the peace, the liquor was condemned as intoxicating and destroyed.

The plaintiff in error, for the single act of carrying the box from the place in which it had been deposited by the trainmen on the platform at Brighton, across the platform and into the depot building, was convicted and fined one hundred dollars, under the section of the statute hereafter quoted. On appeal to the Supreme Court of Iowa, the judgment of conviction was affirmed.

The State v. *Rhodes*, 90 Iowa, 496.

The plaintiff in error sued out a writ of error from this court to the Supreme Court of the State of Iowa and brings the record here for review.

FIRST POINT.

THE CONSTRUCTION PUT BY THE STATE SUPREME COURT UPON THE STATE LAW, UNDER WHICH THE CONVICTION WAS HAD, MAKES THE LEGISLATIVE ACT OF THE STATE A REGULATION OF COMMERCE AMONG THE STATES.

The provision of the state statute under which plaintiff in error was convicted is as follows (Sec. 1553, Code of Iowa, ¶ 2410, McClain's Annotated Code of Iowa):

"If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of $100 for each offense and pay costs of prosecution and the cost shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete, and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are

conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State, to issue the certificate herein contemplated, to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires as shown by the county records. *Provided* however that the defendant may show as a defense hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him."

It will not be questioned that the shipment of the package from Dallas in the State of Illinois to Brighton in the State of Iowa on a through freight contract, was an inter-state shipment, and that the transaction, therefore, was commerce among the States.

The plaintiff in error was convicted as one of the agencies in the performance of this inter-state transaction. The Supreme Court of Iowa say (p. 502):

"Was the defendant, in the removal of the liquor, engaged in transporting or conveying it, within the meaning of our statute? The language of the statute is broad enough to cover the act of defendant in removing the liquor from the platform to the freight room of the depot. He was one of the instruments necessary to complete the act of transportation. If this be so, then, clearly, he is within the terms of the act, as he conveyed the liquor from 'one place to another within this state.' His guilt is not to be determined by the distance he conveyed the package, but his conveying it any distance was a violation of the law.

The carrying of the package, therefore, from the place on the platform in which it had been deposited from the train to the freight depot, is thus held to be in law, as indeed it is in fact, a part of the entire act of transportation. If the state law prohibited the performance of this part of the act of transportation, it is clear that in like manner it prohibited the carry-

ing of the package from Burlington, Iowa, to Brighton, Iowa, and from the Illinois-Iowa line to Burlington. If plaintiff in error, in the act which he performed, "conveyed the liquor from one place to another within this state," then, just as clearly, within the meaning of the law, did the Chicago, Burlington and Quincy Railroad Company and its employes, and the Burlington and Western Railroad Company and its employes "convey the liquor from one place to another within this state," by conveying it in the one case from the state line to Burlington, and in the other case from Burlington to Brighton. In other words, the state law, as here construed by the Supreme Court of the State, prohibited the carrying of this package containing intoxicating liquor, over any portion of the distance from the Illinois-Iowa state line to the freight depot in Brighton. That is, the law of Iowa stands at the boundary line between the two States and prohibits the transportation upon its soil, even for the space of six feet, of intoxicating liquors from the adjoining State, except for the persons whom the State itself has licensed to receive and sell such liquors. It is the act of transportation into the State that is prohibited and punished.

This construction of the state statute makes the Iowa law under which the present conviction was had identical with the statute of that State which was before this court in *Bowman* v. *Chicago and North-Western Railway Company*, 125 U. S., 465. Indeed, the statute that was before the court in that case was the same section under which the plaintiff in error was convicted. At the time of the transaction involved in the Bowman case, however, the section read:

"If any express company, railway company or any

agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or If any other person, *knowingly bring within this state* for any other person, or persons, or corporation, or shall knowingly transport or convey between points or from one place to another within this State, for any other person, or persons, or corporation, any intoxicating liquors," ,etc.

Sec. 10, Chap. 66, Laws Twenty-first General Assembly, Iowa.

Following the decision in the Bowman case (rendered March 19, 1888), the section was amended by omitting the words, "Knowingly bring within this State for any other person, or persons, or corporation." This omission left the statute in the form in which it existed when plaintiff in error was convicted under it. It is perfectly clear, however, that the construction put upon the amended statute by the decision in *State* v. *Rhodes* (90 Iowa, 496) has read these words again into the statute; and that the state law as it now stands, construed by the State Supreme Court, prohibits the transportation of intoxicating liquors into the State from another State. Thus construed the statute is palpably a regulation of commerce among the States. There may be said of it what was justly said of the same statute before its amendment, in the Bowman case.

"It is essentially a regulation of commerce among the States within any definition heretofore given to that term, or which can be given; and although its motive and purpose are to perfect the policy of the State of Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce."

The question presented on this record, therefore, would

be the precise question presented in *Bowman* v. *Railway Company*, if it were not for the passage by Congress of the Wilson Bill in 1890.

SECOND POINT.

IT WAS NOT THE INTENT OF THE WILSON BILL TO PERMIT THE ENFORCEMENT OF A STATE LAW WHICH PROHIBITS THE TRANSPORTATION OF INTOXICATING LIQUORS INTO THE STATE FROM ANOTHER STATE.

The language of the Wilson Bill is as follows: "All fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory be subject to the operation of the laws of such State or Territory enacted in the exercise of its police power, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

Plaintiff in error contends that the words in this act "upon arrival in such State or Territory," as applied at least to an act of transporation, necessarily imply arrival at the ultimate destination of the shipment. The contrary construction put upon the federal act by the Supreme Court of the State of Iowa is, of course, not binding upon this Court. The argument to sustain the contention of plaintiff in error in this behalf is sufficiently set forth in the brief of other counsel, and will not be elaborated here.

THIRD POINT.

IF IT IS THE INTENT OF THE WILSON BILL TO PERMIT THE ENFORCEMENT OF STATE LAWS WHICH PROHIBIT THE TRANSPORTATION OF INTOXICATING LIQUORS INTO THE STATE FROM OTHER STATES, THEN THE WILSON BILL, AS APPLIED TO THE PROVISION OF THE LAW HERE IN QUESTION AND TO A TRANSACTION LIKE THE PRESENT, IS IN EXCESS OF CONGRESSIONAL POWER.

This proposition does not necessarily question the correctness of the ruling in *In re Rahrer*, 140 U. S., 545. The effect of that holding was to assert the power of Congress to permit the enforcement of state laws which regulated or prohibited the first sale of intoxicating liquors brought into the State from other States. It had never been the law in this country until the decision in *Leisy* v. *Hardin*, 135 U. S., 100, that the right to sell any commodity transported into a State from another State was a necessary incident of the right of importation. Indeed, although *Brown* v. *Maryland*, 12 Wheat., 419, had affirmed the right of an importer from a foreign country to sell an imported commodity in its original package free from any regulation or prohibition by the States, *Pierce* v. *New Hampshire*, 5 How., 504, had established exactly the opposite rule with reference to commodities transported into a State from a sister State; and this rule had remained undisturbed until the decision in the Leisy case, only three months prior to the passage of the Wilson bill. The sole effect of the Wilson bill, as construed in Rahrer's case, was to restore the *status quo* which existed before the Leisy decision, and to permit the enforcement of state laws, enacted in the exercise of

their police powers, to regulate or prohibit the original sale of intoxicating liquors transported into the State from other States.

The application of the Wilson bill to the case at bar, would have a farther reach and broader scope. It would permit the enforcement of state laws which have for their object to regulate and prohibit the transportation of intoxicating liquors into the State from other States. It is to be noted that neither the Iowa laws nor the Wilson Bill detract in the least from the established character of intoxicating liquors as legitimate articles of commerce. The Iowa laws do not prohibit the use of, or the traffic in, intoxicating liquors; they merely regulate such traffic and use. It may be said of the Iowa laws, as was said of the Dispensary Act of South Carolina in *Scott v. Donald*, 165 U. S., 58, 93, "Liquors and wines are recognized as commodities which may be lawfully made, bought and sold, and must therefore be deemed to be the subject of foreign and interstate commerce." A federal act which permits the enforcement of state laws having for their object the regulation and prohibition of the importation of one legitimate article of commmerce, might as well extend its sanction to the enforcement of state laws regulating and prohibiting the transportation into the State of any and all commercial commodities. The language of Mr. Chief Justice MATTHEWS in the Bowman case is apposite here (125 U. S. at p. 494):

"If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to estab-

lish a system directed to the promotion and benefit of its own agriculture, manufactures or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select, as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases, as well as to those in which it was sought to legislate in behalf of the health, peace and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States."

The proposition that I here assert, therefore, is, that Congress has no power to permit the enforcement by the State of Iowa of its laws designed to prohibit the importation of legitimate articles of commerce from other states.

"Mr. Chief Justice MARSHALL, in *Gibbons* v. *Ogden* (9 Wheat., at p. 211), said:

"In pursuing this inquiry at the bar, it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. This is true. The Constitution found it an existing right and gave to Congress the power to regulate it."

A power to prohibit the interchange between the States of recognized articles of legitimate commerce would be a power to destroy this right of intercourse which existed before the Constitution. It is not conceivable that Congress, itself, under its power to regulate, could prohibit commerce among the States; much more is it beyond conception that Congress could permit the enforcement of State laws which have that effect. The Rabrer decision announces no such rule.

The long conflict as to the proper construction of the commerce clause of the Constitution, was, until the decision in *Cooley* v. *Board of Wardens*, 12 How., 299, fought around the single question whether the Federal power over commerce was exclusive, or concurrent with a like power in the States. The sole exception to this rule among the cases which preceded the Cooley case was *New York* v. *Miln*, 11 Pet., 102, where the majority opinion was placed upon the proposition that State laws, passed in the exercise of the police powers of the States, were to be held valid even though in their operation they regulated or impeded commerce. This proposition, savagely assailed by Mr. Justice Catron in *The License Cases*, fought without success for recognition in subsequent cases, and was finally put at rest by the decision in *Bowman* v. *Chicago and North-Western Railway Company*. In all the other cases preceding the Cooley case, the issue was as to the exclusiveness or the concurrency of the Federal power. In *Cooley* v. *Board of Wardens*, 12 How., 299, this long controversy was finally set at rest by a compromise which asserted as a definite rule of decision, that as to subjects national in their nature and requiring one uniform system or plan of operation the Federal power over commerce is exclusive, and that as to subjects local in their nature, such as the subject of pilotage under consideration in that case, the Federal power over commerce was concurrent with a like power in the States, which the latter might exercise until Congress itself should regulate the subject. This great compromise has never been formally repudiated, and remains the established rule of decison to-day.

It has ever been the holding of this court that the subject of the interstate transportation of articles of commerce is a subject national in its nature, and therefore falling for regulation within the exclusive power of Congress.

Case of State Freight Tax, 15 Wall., 232; *Wabash, &c., Railway Company* v. *Illinois*, 118 U. S., 557; *Bowman* v. *Chicago and North-Western Railway Company*, 125 U. S., 465.

What is meant by the exclusive power of Congress is well expressed in the language of some of the justices who have been ardent advocates of the exclusive theory. Said Mr. Justice JOHNSON in his separate opinion in *Gibbons* v. *Ogden*, in which he protested that the judgment in that great case should be given on the ground of the exclusiveness of the Federal power, instead of on the ground that the state law granting to Livingston and Fulton the exclusive right of navigation by steam on the navigable waters of the State of New York was in conflict with the laws of Congress regulating the coasting trade:

"And since the power to prescribe the limits to its freedom, necessarily implies the power to determine what shall remain unrestrained, it follows that the power must be exclusive; it can reside in but one potentate: and hence the grant of this power carries with it the whole subject, leaving nothing for the state to act upon."

Gibbons v. *Ogden*, 9 Wheat., at p. 227.

Mr. Justice STORY, in his despairing protest against the retrogressive tendency of the reconstructed court as evidenced by the novel decision in *New York* v. *Miln*, said:

"If the act is a regulation of commerce and that subject belongs exclusively to Congress, it is a means cut off from the range of state sovereignty and state legislation."

Mr. Justice MATTHEWS, in *Smith* v. *Alabama*, 124 U. S., 465, 473, said:

"In such cases the existence of the power to regulate commerce in Congress, has been construed to be not only paramount but exclusive, so as to withdraw the subject as the basis of legislation altogether from the States."

From these definitions it is clear that the conception of the theory of exclusive Federal power over commerce involves the idea of ample and plenary power on the part of Congress, and of *absolute want of power on the part of the States.* If subjects requiring one uniform system or plan of regulation are to be regulated at all, it must be by act of Congress; the subject is entirely removed beyond the reach of the legislative power of the States.

This conception of the nature of the exclusive Federal power, was universally understood and received until unfortunate expressions in the opinions in the Bowman and Leisy cases disturbed it. In the Bowman case Mr. Justice Matthews had said:

"So far as these regulations (certain acts of Congress concerning transportation) made by Congress extend, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, *or by the States in particular cases by the express permission of Congress.*" (p. 485.) * * * It (a State) cannot, *without the consent of Congress*, express or implied, regulate commerce between its people and those of the other States of the Union." (p. 493.)

Mr. Chief Justice FULLER quoted these suggestions in his opinion in *Leisy* v. *Hardin*, and thus re-inforced them in his own language:

"Hence, inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character, and must be

governed by a uniform system, so long as Congress does not pass any law to regulate it, *or allowing the States so to do*, it thereby indicates its will that such commerce shall be free and untrammeled. That ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of courts, is not denied. Being thus articles of commerce, can a State, *in the absence of legislation on the part of Congress*, prohibit their importation from abroad or from a sister State? or, when imported, prohibit their sale by the importer? If the importation cannot be prohibited *without the consent of Congress*, when does property imported from abroad, or from a sister State, so become part of the common mass of property within a State as to be subject to its unimpeded control? (pp. 109, 110.) * * *

The conclusion follows that, as the grant of power to regulate commerce among the States, so far as one system is required, is exclusive, the States cannot exercise that power *without the assent of Congress*, and, in the absence of legislation, it is left for the courts to determine when state action does or does not amount to such exercise, or in other words, what is or is not a regulation of such commerce. (p. 119.) * * * Up to that point of time (the first sale in original package) we hold that *in the absence of Congressional permission to do so*, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or non-resident importer. (p. 124.) * * * To concede to a State the power to exclude, directly or indirectly, articles so situated *without Congressional permission*, is to concede to a majority of the people of a State, represented in the state legislature, the power to regulate commercial intercourse between the States, by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect union which the Constitution was adopted to create." (p. 125.)

These are, I believe, the first and the only suggestions in the books that Congress might permit the States to regulate interstate or foreign commerce. These suggestions undoubtedly inspired the passage of the Wilson Bill, which found its way through Congress within three months after the Leisy case had been decided. The opinion in *Scott* v. *Donald*, 165 U. S., 58, recognizes this probability. "After the decision in *Leisy* v. *Hardin*" says the opinion (p. 98), "and perhaps in pursuance of some observations contained therein, Congress passed the act of August 8, 1890" (the Wilson Bill).

Although the quoted suggestions in the Bowman and Leisy opinions that Congress might permit the States to enact laws amounting to regulations of interstate commerce, were thus undoubtedly responsible for the passage of the Wilson bill, the validity of that enactment could not, of course, be upheld on that ground. It had been too often declared that Congress could not give a right to a State in virtue of its own powers, or enable a State to legislate (MARSHALL, Ch. J., in *Gibbons* v. *Ogden*); or restore to the States the power of which they were deprived in the commerce clause (TANEY, Ch. J., in *The License Cases*); or delegate to a State power to pass an act amounting to a regulation of interstate commerce. (*Stoutenburgh* v. *Hennick*, 129 U. S., 141.) The doctrine which had cropped out inadvertently in the Bowman and Leisy cases, that Congress might permit the States to regulate interstate commerce was, therefore, repudiated. But the reasoning which, in Rahrer's case, upheld the Wilson Bill as a valid exercise of Congressional power, as applied to the state law there in question (a law regulating the sale of imported articles after they had reached their destination within the State), cannot, I submit, justify the Wilson

Bill as applied to the law here in question, a law prohibiting the transportation of legitimate articles of commerce into the State.

The theory of the Rahrer opinion is, not that the States lack power to regulate the subject of the sale of imported articles, but that the will of Congress (implied from the absence of Congressional regulation on the subject), that the subject should be free from regulation, prevents the enforcement of the state laws.

Early in the opinion it is said:

"The power of Congress to regulate commerce among the several States, when the subjects of that power are national in their nature, is also exclusive. The constitution does not provide that inter-state commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraint. Therefore, it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several states."

Citing:

Robbins v. *Shelby Taxing District*, 120 U. S., 489.

This is but a restatement of a proposition that is as old as the earliest discussion of the commerce clause. Mr. WEBSTER, in his argument in *Gibbons* v. *Ogden*, had said:

"All useful regulation does not consist in restraint; and that which Congress sees fit to leave free is a part of its regulation as much as the rest."

Webster was arguing for the establishment, in *Gibbons* v. *Ogden*, of the doctrine of exclusive Federal power over the entire subject of inter-state and foreign commerce. His meaning was that the power of Congress

covered the entire subject, excluding altogether any power in the States; and that the States were just as impotent to regulate a subject which Congress by its silence meant should be free from regulation, as they were powerless to regulate another subject which Congress by express act had subjected to regulation. So MARSHALL understood the argument:

"Appellant," he said, * * * "contends that full power to regulate a particular subject implies the whole power and leaves no residuum; that the grant of the whole is incompatible with the existence of a right in another to any part of it." * * *

It has been contended by the counsel for the appellant, that, as the word 'to regulate' implies in its nature, full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched, as that on which it has operated. There is great force in this argument, and the court is not satisfied that it has been refuted."

Gibbons v. *Ogden*, 9 Wheat., at pp. 198, 209.

Such was the meaning of Mr. Justice GRIER, who next used the idea in his opinion in *The Passenger Cases:*

"And to what weight," he says, "is that argument entitled, which assumes, that because it is the policy of Congress to leave this intercourse free, therefore it has not been regulated, and each State may put as many restrictions upon it as she pleases? * * * In conclusion, we are of opinion * * * 4th, that Congress has regulated commerce and intercourse with foreign nations and between the several States, by willing that it shall be free, and it is therefore not left to the discretion of each State in the Union, either to refuse the right of passage

to a person or property through her territory, or to exact a duty for permission to exercise it."

The Passenger Cases, 7 How., at pp. 462, 3, 4.

Such, finally, was the spirit in which Mr. Justice FIELD formulated the principle in *Welton* v. *Missouri*, 91 U. S., 275:

"The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its action on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammeled."

A new inference was drawn in the Rahrer decision from this accepted statement of a palpable truth (p. 559):

"The laws of Iowa under consideration in *Bowman* v. *Railway Company*, 125 U. S., 465, and *Leisy* v. *Hardin*, 135 U. S., 100, were enacted in the exercise of the police power of the State, and not at all as regulations of commerce with foreign nations and among the States, but as they inhibited the receipt of the imported commodity, or its disposition before it had ceased to become an article of trade between one State and another, or another country and this, they amounted in effect to a regulation of such commerce. Hence, it was held that inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically or in such way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such commerce should be free and untrammeled, and therefore that the laws of Iowa, referred to, were inoperative, in so far as they amounted to regulations of foreign or interstate commerce, in inhibiting the reception of such articles within the State, or their sale upon arrival, in the form in which they were imported there from a foreign country or another State. It followed as a corollary, that when Congress acted at all, the result of

its action must be to operate as a restraint upon that perfect freedom which its silence insured.

Congress has now spoken, and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature."

Here is a plain implication that the perfect freedom of interstate commerce from regulation by the States is insured, not by the impotency of the States to enact regulations on the subject, but by the will of Congress, implied from its silence; and that state regulation of such commerce is possible whenever a change in the will of Congress is expressed in a Federal act. I do not quarrel with this proposition in its application to the facts of the Rahrer case. The scope of its influence is expressed in the next following language of the opinion (p. 562):

"No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so."

In other words, the effect of the Wilson bill, as applied to the Kansas law in question in the Rahrer case, was merely to declare that the traffic in intoxicating liquors ceased to be interstate commerce immediately *before*, instead of immediately *after* the first sale in the original package. That such a declaration is within the competency of Congress, may well be; but that Congress may declare that the transportation from State to State of legitimate articles of commerce ceases to be interstate commerce at the boundary line of the State into which they are to be transported, is quite another question. The reasoning that reached the conclusion announced in the Rahrer case does not reach this farther mark.

The subject of the interstate transportation of property, we repeat, has been adjudged to be of such a national nature as to admit of regulation only by the exclusive power of Congress. Such regulation, in the language of Mr. Justice MILLER, "can only appropriately exist by "general rules and principles, which demand that it should "be done by the Congress of the United States under the "commerce clause of the constitution."

Wabash, &c., Railway Co. v. *Illinois*, 118 U. S., p. 577.

The perfect freedom of this subject of interstate commerce from such a regulation as the Iowa law here in review is insured, not by the silence of Congress on the subject, but by the absolute impotency of the State to enact such a regulation. Whether Congress was silent or not, the State, by the commerce clause of the constitution, had been absolutely divested of any power over this subject of commerce, which, being national in its nature, required "one uniform system or plan of regula-"tion." The subject was removed, in the language of *Smith* v. *Alabama*, "as the basis of legislation altogether from the States."

The effect of the silence of Congress upon such a subject was only to indicate its will that commerce in that particular should be free from any regulation—not free from regulation by the States, for the States had no power at all to regulate the subject.

Indeed, the formulation of the doctrine that the silence of Congress was an indication of its will that commerce should be free from regulation, was never necessary or designed for the purpose of declaring void an attempted regulation by the States upon such a subject. Without

reference to the silence of Congress, the attempt of the States to enact a law upon such a subject would be void because the subject was removed beyond the range of the legislative power of the States.

The proper use of this doctrine of the silence of Congress, is indicated in *Hall* v. *DeCuir*, 95 U. S., 485. We quote from the opinion of Mr. Chief Justice WAITE (p. 490):

"As was said by Mr. Justice FIELD, speaking for the court, in *Welton* v. *State of Missouri*, 91 U. S., 282, 'inaction (by Congress) * * * is equivalent to a declaration that inter-state commerce shall remain free and untrammeled.' Applying that principle to the circumstances of this case, Congressional inaction left Benson at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat, while pursuing her voyage within Louisiana or without, as seemed to him most for the interest of all concerned. The statute under which this suit is brought, as construed by the state court, seeks to take away from him that power so long as he is within Louisiana; and while recognizing to the fullest extent the principle which sustains a statute, unless its unconstitutionality is clearly established, we think this statute to the extent that it requires those engaged in the transportation of passengers among the States to carry colored passengers in Louisiana in the same cabin with whites, is unconstitutional and void. If the public good requires such legislation it must come from Congress and not from the States."

In other words the true meaning of the doctrine of the silence of Congress is, that absence of regulation by Congress upon subjects national in their nature and subject therefore only to regulation under the exclusive power of Congress, is an indication, not to the States, but to the parties engaged in foreign and inter-state commerce, that as to those subjects, inter-state and foreign commerce is free and untrammeled. The silence of Congress indi-

cates its policy that as to those subjects of commerce, the persons engaged in them shall regulate it themselves. It imputes nothing as to power or absence of power on the part of the States. It raises no new barrier against state regulation, for the reason that an absolute and insuperable barrier against such regulation upon such subjects is erected by the provision of the Federal Constitution, as construed in *Cooley v. Board of Wardens*, which confides the regulation of such subjects solely to the exclusive power of Congress.

To say that the silence of Congress upon those subjects is an indication to the States that they must not regulate those subjects, but that when the silence is removed, the States may regulate them, is to admit the existence of the power to regulate such subjects on the part of the States. Such is the clear statement of the Rahrer decision as to the subject there under consideration.

"Congress did not use terms of permission to the States to act, but simply removed an impediment to the enforcement of the state laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the States not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction."

This position, I concede again, may be perfectly sound as applied to the facts of Rahrer's case. The State of Kansas undoubtedly had the power to prescribe regulations for the sale of intoxicating liquors within the State, and it was probably competent for Congress to provide that liquors brought into the State from other States should become subject to the state regulations before, instead of after, the first sale. But the State of Iowa, in declaring that a common carrier shall not transport a legitimate article of commerce into the State (and this is the meaning

of the state law here in question, as construed by the Iowa Supreme Court), was enacting a regulation of interstate commerce upon a subject national in its nature, and, therefore, subject to regulation only under the exclusive power of Congress. In so doing, it was legislating upon a subject "cut off from the range of state sovereignty and state legislation." The conception of the exclusiveness of the Federal power necessarily involves the idea that any state legislation attempting to exercise that power is void, not as being in conflict with the will of Congress, express or implied, but as an attempted exercise of power of which the States under the Federal Constitution are totally divested. A subject which requires exclusive legislation by Congress cannot admit of any legislation by the States; and this is so, whether Congress has or has not legislated on the subject.

The Iowa law, then, was void *ab initio* for want of power in the State to pass it. Such was the ruling in *Bowman* v. *Railway Company*. If the law now has any force, it is conceded that it is only by virtue of the Wilson Bill. If the Wilson Bill was intended to permit the enforcement of such a law, it becomes clearly an effort on the part of Congress to give efficacy to a pretended law which the State had no power to pass. That Congress cannot authorize a State to enact such a regulation of commerce has been adjudged.

Gibbons v. *Ogden*, 9 Wheat., 1.
The License Cases, 5 How., 504.
Cooley v. *Board of Wardens*, 12 How., 299.
Stoutenburgh v. *Hennick*, 129 U. S., 141.

That Congress could subsequently authorize the en-

forcement of an act thus clearly beyond the power of the State to pass, is a proposition the refutation of which requires no argument.

The *Rahrer* case is clearly distinguished from the case at bar by the concluding sentences of the opinion. It is said:

"This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress."

This statement certainly cannot be made of the Iowa law under which the present conviction was secured. *Bowman* v. *Railway Company* is express authority for the proposition that the Iowa law, as construed in the opinion of its Supreme Court, is "an unauthorized interference with the power given to Congress over the subject." This, then, *is* "the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress." Congress is without power to vivify this act of the State which was, in the beginning, beyond its authority to enact, and if the Wilson Bill is designed to accomplish that task, it is, in turn, an act in excess of Congressional power.

No other conclusion is possible unless the salutary line of distinction between the fields of exclusive and concurrent power, so clearly marked in *Cooley* v. *Board of Wardens*, and hitherto followed, is to be wholly obliterated and the theory of exclusive Federal power to be finally cast aside. To hold that only the silence of Congress prevents the enforcement of State regulations of subjects of interstate commerce national in their nature, is to hold that the States have power to en-

act such regulations, the occasion of their enforcement only depending upon the Congressional will. This is a fair statement of the theory of concurrent power, under which, according to the Cooley case, the States may regulate subjects of a local character. The only difference is that upon local subjects the state regulations may be enforced until displaced by Federal regulations; while upon national subjects the state regulations may not be enforced until Congress gives its consent. In both cases state power to legislate exists, the occasion of its exercise only depending on the will of Congress.

This leaves it within the power of Congress, without an amendment of the constitution, to permit the enforcement of the diverse regulations of the States upon every possible subject of interstate commerce. Already a bill, in the image of the Wilson Bill, has passed the House and is pending in the Senate, which surrenders oleomargarine to state regulation. Every other commodity, the commerce in which affects injuriously special interests or particular localities, may become as likely a candidate as oleomargarine for similar congressional distinction, and eventually each State, in proportion to its influence and power in Congress, may secure the passag of laws which would permit it to regulate or prohibit the importation and sale of any commodity which might be deemed harmful to the health or morals of the commonwealth or inimical to its industrial growth or welfare. Judicial construction of the commerce clause which leads to such a possibility but invites a recurrence of "the oppressed and degraded state of commerce previous to the adoption of the constitution" which more than "any of the evils proceeding from the feebleness of the Federal government, con-

tributed to that great revolution which introduced the present system." MARSHALL, Ch. J., in *Brown* v. *Maryland*.

The power confided to Congress in the commerce clause is the power to regulate commerce, not to permit its regulation by the States. It is impossible that any act passed by Congress in pursuance of the commercial power should prescribe anything but "one uniform system or plan of regulation." A Federal law is beyond conception which should declare that the transportation and sale of oleomargarine should be lawful in Missouri and unlawful in Massachusetts, or that a common carrier should be compelled in Illinois to receive intoxicating liquors for transportation into Iowa and punished in Iowa for the performance of the act enforced in Illinois. Yet, inconceivable as it is that Congress should itself pass such a law, it has, if the Wilson Bill authorizes the enforcement of the Iowa law under which this conviction was had, vitalized state laws which have, as to intoxicating liquors, precisely that effect. Such a recognition of state laws upon a subject, the regulation of which was entrusted solely to Congress for the express reason that in its nature it requires "one uniform system or plan of regulation," is essentially a restoration to the States of that sovereign power of regulation, the diverse exercise of which produced the commercial anarchy and confusion that reigned during the Confederation.

It is submitted that such sanction cannot be given to the state law here in controversy, and that the judgment of conviction should be reversed.

Respectfully submitted.

ROBERT MATHER,
Of Counsel for Plaintiff in Error.

No. 146.

Brief of Remley for D. E.

ARGUMENT OF DEFENDANT IN ERROR.

Filed Nov. 28, 1896.

Supreme Court of the United States.

OCTOBER TERM, 1896.

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Clerk

T. H. RHODES, Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

THOMAS HEDGE, J. W. BLYTHE AND H. M. EICHER,
COUNSEL FOR PLAINTIFF IN ERROR.

MILTON REMLEY, ATTORNEY GENERAL,
COUNSEL FOR DEFENDANT IN ERROR.

ARGUMENT OF DEFENDANT IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 146.

T. H. RHODES, Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

STATEMENT OF THE CASE.

In addition to the facts stated in the statement of the case by the plaintiff in error, I would call attention to the further fact that the plaintiff in error is a resident of the State of Iowa. He was the agent of the Burlington & Northwestern Railroad Company at Brighton, Iowa. The said Burlington & Northwestern Railway Co. is a corporation incorporated under the laws of Iowa and operating a line of railway from Burlington, Iowa, to and through Brighton. All of the line of said railway is wholly within the State of Iowa.

The receipt and way bill, marked Exhibits "A" and "B" respectively, on page 4 of the transcript, which are called the contract for the transportation of the intoxicating liquors, were given by the Chicago, Burlington & Quincy Railroad, at Dallas, Illinois The box marked "groceries" containing the intoxicating liquors, was received at Burlington, Iowa, by the Burlington & Northwestern Railway Co., and by it transported from Burlington to the town of Brighton. The act of the plaintiff in error in carrying the intoxicating liquors from the car to the freight depot of the Burlington & Northwestern, at Brighton, knowing the same to be intoxicating liquors, was the offense for which he was convicted, it being in violation of the Iowa statute set out in the argument of plaintiff in error.

I do not understand the plaintiff in error to claim that the evidence was not sufficient to justify the conviction of the plaintiff in error if the law under which he was convicted is valid, nor indeed, can such a question be determined in this court.

ARGUMENT.

The real question involved in this case is the proper construction and effect to be given to the Act of Congress of August 8th, 1890, commonly known as the Wilson Bill. Other questions are discussed by the plaintiff in error, in regard to some of which there can be no controversy.

I will not controvert the proposition that intoxicating liquor is, under the rulings of this court and other courts, an article of commerce; nor will I discuss the question whether prior to the enactment

of the Wilson Bill, its importation into the state and sale therein in original packages was not protected by the interstate commerce clause of the Federal Constitution. These questions have been determined in Bowman vs. Chicago & Northwestern, 125 U. S, 485, and Leisy vs. Hardin, 135 U. S., 112.

It is not necessary for me to discuss the question whether or not a state, under the police powers reserved to the states, in the absence of any action on the part of Congress, may enact statutes which effect interstate commerce The later decisions of this court leave no room for doubt upon this question.

With reference to the facts involved in the case at bar, Congress has declared that "intoxicating liquors transported into any state or territory or remaining therein, for use, consumption, sale or storage, shall, upon arrival into such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, to the same extent and in the same manner as if such liquors had been produced in such state or territory." It, therefore, is useless to discuss a state of facts other than that involved in the case at bar.

It is unnecessary for me to discuss the question when the act of transportation terminated, or when it began, and for the purposes of this case I am willing to concede that it did not terminate until the package transported had been delivered at the warehouse or depot at Brighton, Iowa.

I do not understand the learned counsel of plaintiff in error to raise any question that the Iowa statute, Section 1553 of the Code of Iowa, is invalid or cannot be enforced against intoxicating liquors produced in the State of Iowa, and against persons engaged in transporting the same from point to point or place to place within the state.

If, then, the plaintiff in error is not amenable to this law, it is solely for the reason that the liquors which were transported by him were within the protection of the interstate commerce clause of the Federal Constitution.

The position taken by the plaintiff in error is in effect that the Act of Congress known as the Wilson Bill is inoperative and void because it attempts to delegate to the states the power to regulate the traffic in intoxicating liquors, which is the subject of interstate commerce.

It is said by counsel that "interstate commerce is within the exclusive jurisdiction of Congress and exempt from the local jurisdiction of the state. Every subject of it, equally with every other, is within this exclusive jurisdiction, and exempt from the local jurisdiction. It is only when it ceases to be a subject of commerce, that the local jurisdiction can control, and it does not cease to be a subject of commerce except as a commercial fact, and not the result of statutory enactment." Then is cited one sentence from the opinion of this court *in re* Rahrer, 140 U. S., 560, which is as follows: "It does not admit of argument that Congress can neither delegate its own powers or enlarge those of the states."

The very question which plaintiff in error presents, was presented to the court *in re* Rahrer. On page 561 of the opinion, it is said: "In other words, it is earnestly contended that the Constitution guarantees freedom of commerce among the states in all things, and that not only may intoxicating liquors be imported from one state into another without being subject to regulation under the laws of the latter, but that Congress is powerless to obviate the result." Thus the grant to the general government of a power designed to prevent embarrassing restrictions upon interstate commerce by any state, would be made to forbid any restraint whatever. We do not concur in this view. In surrendering their own power over external commerce the states did not secure absolute freedom in such commerce, but only the protection from encroachment afforded by confiding its regulation exclusively to Congress. * * * But this furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In doing so, Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the states, or to grant a power not possessed by the states, or to adopt state laws * * * No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competence to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject, have arisen not from a denial

of the power of Congress when exercised, but upon the question of whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the states.

We recall no decision giving color to the idea that when Congress acted, its action would be less potent than when it kept silent. The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge. The manner of that disposition brought into determination upon this record, involves no ground for adjudging the act of Congress inoperative and void."

Under Section 8 of Article 1 of the Constitution, which provides, among other things, "Congress shall have power to regulate commerce with foreign nations and among the several states and among the Indian tribes," it has been held that in matters which do not require, from the nature of the case, uniformity, where Congress fails to act, it is within the power of the state to enact statutes which may affect commerce with foreign nations and among the several states, as for instance, police regulations of harbors, etc.

In Pierce vs. New Hampshire, 5 How., 504, the view was understood to be expressed that in the absence of any law of Congress regulating interstate commerce or commerce with foreign nations, a law passed by the state, although it affected such commerce, would be upheld. Afterwards a different doctrine has obtained, viz., that the non-action of Congress in regard to interstate commerce is taken as an intention on the part of Congress that such matters shall be free and untrammeled. This doctrine has been frequently announced by this court.

Cases cited in Robbins vs. Shelby Taxing Dist., 120 U. S., 489.

In the County of Mobile vs. Kimball, 102 U. S., 691, 697, it is said, "The non-action of Congress in such cases with respect to any particular commodity or mode of transportation, is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free."

The regulation of interstate commerce being exclusively within the powers and jurisdiction of Congress, it is unquestionably within the

power of Congress to determine whether it shall be free, and if not free in every particular, in what particular it shall be, or in respect to what commodities of commerce it shall not be free and untrammeled. This doctrine is clearly announced *in re* Rahrer, 140 U. S., *supra*. It logically follows that Congress may declare that commerce in intoxicating liquors shall not be free and untrammeled, or to suppress it; that intoxicating liquors as a commodity, are not subject to interstate commerce in the sense that their transportation and sale shall be free, unrestricted and untrammeled by the police regulations of the states.

Under the repeated decisions of this court, no one will question that the restriction or prohibition of the traffic in intoxicating liquors within the state is in the valid exercise of the police powers of the state. It is only when the exercise of these police powers comes in conflict with the powers granted to Congress to regulate interstate commerce, that statutes of a state must yield.

In Bowman vs. C. N. W. Ry Co., 125 U. S., 465, 493, this court says, "It (the state) cannot without the consent of Congress, expressed or implied, regulate commerce between its people and those of other states of the Union in order to effect its ends, however desirable such a regulation might be."

In Brown vs. Houston, 114 U. S., 622, 630, it is said, "So long as Congress does not pass any law to regulate commerce among the several states it thereby indicates its will that that commerce shall be free and untrammeled, and any regulation of the subject by the states is repugnant to such freedom."

The Act of Congress of Aug. 8, 1890, (the Wilson bill) is an express declaration on the part of Congress that interstate commerce in intoxicating liquors shall not as against the wishes of the state be left free and untrammeled. We are left no longer to inference, because of non-action on the part of Congress, in regard to the congressional will. It is expressly stated. The will or consent of Congress is not to be learned from implication, but is expressly and plainly stated. That expressed is that intoxicating liquors shall not be forced upon the people of a state against the will of the state as expressed in its laws. It shall not on its arrival in the state "be exempt from local jurisdiction," but shall be subject thereto. This certainly is within the

competency of Congress. As said *in re* Rahrer, cited above, "The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge."

In re Spickler, 43 Fed. Rep., 653, the learned Judge Shiras said, "The states are not authorized to declare when such importations shall become subject to state control, nor can the states in any manner change or affect the enactment made by Congress on that subject. Congress can at any time abrogate or change the enactment in question and it is clearly a constitutional exercise of the power conferred on Congress. It is apparent to every one that at some time, or upon the happening of some event, imported property loses that character, and becomes subject to the laws of the state; and it is for Congress, which possesses the power to regulate commerce, to define the time or event which shall have the effect of subjecting importations to state control, and this is what is done by the Wilson bill in regard to intoxicating liquors."

To the same effect is the opinion of Judge Caldwell *in re* Van Vleit, 43 Fed Rep., 761.

In State *ex rel* Bartlett vs. Frazier, 48 N. W. R., 343, the Supreme Court of North Dakota says, "It will suffice to state that we concur in the conclusions reached in the cases cited, and hold that the Wilson law is a valid enactment, and is not a delegation, but an exertion of the legislative power of Congress. Such legislation only indicates the time and event which determines when intoxicating liquor ceases to be an article of interstate commerce, and becomes mingled with the mass of property in the state, and thereby subject to state control."

This is a fair statement of the law deduced from the opinions of this court, and of various other courts. In view of this, we cannot concur with the conclusion of the learned counsel for plaintiff in error, that an article of commerce "does not cease to be a subject of commerce *except as a commercial fact*, and not as a result of statutory enactment." Every case in which the subject is involved holds that it is within the power of Congress to declare what articles shall be the subject of interstate commerce, and to make any and all regulations that to Congress may seem best.

II.

It is contended by the counsel for the plaintiff in error that "Congress will not permit the police powers of each state to take effect upon commerce or upon commerce between the states, because there can be no assurance that the operation of such laws would be uniform." I do not care to pursue the argument of counsel under this head to any extent. I think that what has been said is a sufficient answer to the theories which they have advanced. What is said in regard to the different methods in which the police power of the different states is exercised, prescribing different penalties in regard to the question of intoxicating liquors, might be, with equal force, said in regard to every subject that comes within the province of the states to legislate upon. The argument of counsel, if it has force in regard to this particular question, applies with equal force to every question upon which a state may legislate, or upon which different states may have different legislation. This would lead then, carried to its logical conclusion, to a total abrogation of the state organizations, and would argue in favor of a centralized government whose every law should be of uniform operation throughout the entire United States. This, of course, is contrary to the principles of our government. It is doubtful, indeed, whether a vast empire as our own, embracing different climates, diverse conditions of soil, occupations and characteristics of the people, would be best governed in all local matters by a central government. The present system in best suited to the conditions of America, and under this system, there must ever be a non-uniformity in the laws governing the local communities

The argument, however, seems to be based upon the theory that Congress delegates to the states the right to regulate commerce and to fix fines and penalties for the violation of its local enactments, by the passage of the Wilson law. This position is so thoroughly refuted by the opinion of this court *in re* Rahrer, 140 U. S., 560, that it is not necessary to further notice it.

III.

It is contended by the counsel for the plaintiff in error, that "the Act of Congress of August 10th, 1892, (the Wilson law) does not permit the police law of Iowa to operate upon that branch of interstate commerce which consists in transportation, or to avoid or im-

pair the contract of transportation." If it be conceded that it is within the police power of the state to regulate or prohibit the traffic in intoxicating liquors, then any law or provision of law which has for its object securing the ends sought by the legislature, is a legitimate exercise of the powers of the state. If it is true, as declared under the Act of Congress of August 8th, 1890, that intoxicating liquors, upon their arrival in a state, are subject to the laws of such state, then they become subject to *all the laws* of such state, and if the act of transportation of intoxicating liquors produced within the state is illegal, then the transportation of such liquors brought within the state from another state becomes equally illegal.

The real question is whether the state has power to prohibit common carriers within the state from transporting what is in law recognized as a contraband article, from one place to another. I do not think it will be seriously questioned that the power of the state is full and ample in its efforts to secure the suppression of the traffic in intoxicating liquors, to prohibit their transportation. Then when intoxicating liquor is brought within the state under the Wilson Law, it becomes subject to the same laws that liquor produced within the state is subject to.

The fact that the contract of transportation was made at Dallas, Illinois, outside of the state of Iowa, by the C. B. & Q. Railroad Company, does not change the law. A part of the transportation contract, upon the theory of the plaintiff in error, was to be performed in the state of Iowa. The parties to the contract knew that the performance of such contract would be a violation of the laws of the state of Iowa. They knew also that because of the Wilson law, such contract would not be protected by the interstate commerce clause of the Federal Constitution. Parties may not make a valid contract to violate the laws of the state. In this case, however, the Burlington & Northwestern Railroad, a citizen of the state of Iowa, and operating its road wholly within the state, cannot authorize the C. B & Q. Railroad Co. to make a contract for it in the state of Illinois, when its part thereof must be carried out wholly within the jurisdiction of the state of Iowa, and in violation of its laws.

With reference to such liquors and contracts made for their transportation, the Wilson law takes away the protection of their interstate commerce character upon their arrival within the limits of the

state of Iowa. It must be presumed that this was known to the parties at the time the contract was entered into. The Burlington Northwestern Railroad can claim no protection for itself, and hence cannot claim protection for its agent, who knew the character of the merchandise transported, and in aiding therein violated the laws of the state.

The distinction attempted to be drawn between the power of the state to regulate and prohibit the sale of the article after its arrival in the state, and its power to prevent the transportation thereof after its arrival in the state, is, in my judgment, unwarranted by the authorities and unsound in reason. No well-considered case has ever placed any restriction upon the powers of the state to prevent the transportation of different articles from place to place within the state. The power to regulate internal commerce is one that was never granted by the states to the government of the United States. It has full and complete power to regulate, control or prohibit the transportation of any article whatsoever, that the legislature may deem injurious to public health or against public policy to permit to be transported or sold. All of the decisions which relate to transportation of interstate commerce are based upon the theory that the transportation is a part of the commercial transaction. Commerce consists of barter and sale. As an auxilliary to this is the transportation of the article sold. The transportation from one state to another comes within the power of Congress to regulate, solely because it is an act in commerce. Congress has no power to regulate the transportation outside or independent of its association with commerce, which is, strictly speaking, barter and sale.

If, then, the subject of commerce is by the Act of Congress of 1890, placed without the protection of the Federal authority, and is subject to the police laws of the state, then transportation thereof as an incident of commerce, is also taken out of the protection of the interstate commerce clause of the constitution of the United States.

The learned counsel for plaintiff in error contend that the exemption from the operation of the laws and effect of such laws of a state does not begin until the articles transported from one state to another shall arrive at the destination within the state, or the point to which they were shipped; that the act of interstate transportation continues until it comes "to the end of the carry." They also assume that if

the construction which was given by the Supreme Court of Iowa to this law is maintained, that liquors passing through the state in the continuous passage therein between two states, are brought under the jurisdiction and operation of the laws of Iowa. In regard to the last proposition I will say that the phrase, "for use, consumption, sale or storage therein," is a description of the kinds of fermented, distilled or other liquors referred to in the act, and such liquors transported in the state for continuous passage across the state, and not for use, consumption, sale or storage within the state, are not by said Act of Congress, made subject to the operation and effect of the laws of the state. Such liquor passing through the state on the continuous journey from one state to the other, is still within the protection of the interstate commerce clause of the Constitution of the United States, for aught that appears in the Act of Congress of August 8th, 1890.

In regard to the intent of the Act of Congress as to the point of time when the interstate character of the article should cease, the construction given by the Supreme Court of the state of Iowa seems to be the only one which the language of the Act is capable of receiving. Take the phrase, "upon its arrival in such state or territory"; what does that mean? It does not mean "to the end of the carry." Congress might have said, "upon its arrival at the point of its destination in such state or territory," but it did not. It might have said, "upon its delivery to the consignee at the point to which it has been shipped," but such was not the language used. A passenger may arrive in the state, days and weeks before he reaches his objective point within the state. The language of the act clearly intended that such liquors, the moment they arrived within the territorial jurisdiction of the state, should be subject, in all respects, "to the same extent and in the same manner as though such liquids or liquors had been produced within such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

That this was the intention, is gathered not only from the statute and the evil to be corrected by the enactment thereof, but from the arguments in the Senate and House of Representatives, to which the counsel for plaintiff in error have referred us. It appears therefrom that is was the intention of Congress to divest intoxicating liquors of their interstate commercial character, and to make the same, subject

in all respects to the laws of the state or territory into which the same might be transported. The interpretation of the language, "upon its arrival in such state or territory," given by Judge Simonton *in re* Langford, 57 Fed. Rep., 570, does not appear to be sound. Its arrival in such state is far different from its arrival at the point of destination in such state. The analogies by which the conclusion was reached by the learned judge do not hold, because of the difference of the language used. But if we were to accept the interpretation of Judge Simonton, then the liquor in question, upon its arrival at Brighton, became subject to the operation and effect of the laws of the state, and the act of which the defendant was convicted was a violation of the police laws of the state, and under this interpretation, even he was not entitled to the protection of the Federal Constitution.

"It is the plea of the plaintiff in error, that his act was in the course of business between the states of Illinois and Iowa, and was, in its legal character, an act exclusively of national concern." A ready answer to this is that the will of Congress has been plainly expressed, that it is not a matter of national concern; that the freedom of commerce between the states, which is exclusively within the control of Congress, shall not continue free and untrammeled in regard intoxicating liquors against the wishes of the state. The act of August 8th, 1890, is a declaration by the highest legislative power of the nation that whoever imports intoxicating liquors into any state, upon their arrival in such state cannot claim therefor the protection of Federal authority, but is amenable to all the laws of such state.

In every aspect of the case it seems that the judgment of the Supreme Court of Iowa should be sustained.

MILTON REMLEY, Attorney General of Iowa,
For Defendant in Error.

No. 21.

Brief (addl.) of Remley for

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Filed Jan. 9, 1898.

Supreme Court of the United States.

T. H. RHODES, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

Additional Argument of Defendant in Error.

THOMAS HEDGE, J. W. BLYTHE, H. M. EICHER AND ROBERT MATHER, COUNSEL FOR PLAINTIFF IN ERROR.

MILTON REMLEY, ATTORNEY-GENERAL, COUNSEL FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States,

T. H. RHODES,
Plaintiff in error.

v.

THE STATE OF IOWA,
Defendant in error.

Error to the Supreme Court of Iowa.

ADDITIONAL ARGUMENT FOR DEFENDANT IN ERROR.

Since the order of the court setting aside the submission in this case, and setting it down for oral argument, we have been served with an argument of Mr. Robert Mather, counsel for plaintiff in error, and will endeavor to reply to the argument thus presented, considering the points presented by him in the order in which they are argued.

I.

It is contended by the counsel that the decision of the supreme court of Iowa in this case virtually reads into the Iowa statutes the words which, in the case of *Bowman v. The Chicago, North-Western Railway Co.*, 125 U. S., 465, were held to be obnoxious to the federal constitution, so far as the same related to interstate commerce.

The specific act of which the plaintiff in error was convicted was transporting a package of intoxicating liquors

from one place, viz. a freight car, to another place, the depot, at Brighton, Iowa, both places being wholly within the state. The conclusion which the learned counsel reaches, as stated above, is based upon the idea that if the entire act of transportation is not protected by the commercial clause of the constitution, that no carrier can transport intoxicating liquors across the line into the state without being amenable to the Iowa law.

The purpose of the Wilson bill was to subject all intoxicating liquors imported into a state, upon its *arrival in such* state, to the operation of the laws of such state enacted in the exercise of its police power. If, then, it is a proper exercise of the police power of a state to prohibit the transportation of liquor from one point to another in the state as a means of suppressing the traffic in intoxicating liquors, it follows, as a logical sequence, that said liquor became subject to such law. In the exercise of its constitutional power, congress has said that intoxicating liquors transported into a state shall, upon arrival in such state, be subject to the laws of such state. It is simply the removal of the protection which the power given to congress by the federal constitution had over intoxicating liquors as an article of interstate commerce.

On the other hand, if the construction contended for by counsel for plaintiff in error prevails, then the Wilson bill is practically robbed of more than half its power and purpose. Before the enactment of the Wilson bill, the protection of the United States constitution accompanied the liquor from the time its transportation was commenced in one state until it reached its destination in another state. The Wilson bill says, however, that it "shall, upon its arrival in such state or territory, be subject to the operation of the laws of such state or territory." The laws of Iowa in substantially the present form were enacted prior to the passage of the Wilson bill. The purpose of all the Iowa laws has been to supperss intemperance. While the use of intoxicating

liquors is not made a criminal act (although becoming intoxicated is), yet the law, by prohibiting its sale and its transportation, has endeavored to discourage and prevent the use and consumption of intoxicating liquors. The Wilson bill recognizes this in the language used: "Intoxicating liquor transported into a state, * * * for *use, consumption, sale or storage* therein, shall, upon its arrival in such state or territory, be subject to the operation of the laws," etc.

Prohibiting the sale of intoxicating liquors by liquor dealers is not enough. The transportation of liquors must also be prohibited for use or consumption, as the Iowa legislature thought, in order to protect the community from the evils of intemperance. If, then, the Wilson bill does not subject the intoxicating liquors transported into a state, to the law of the state, upon its coming within the limits of the state, the protection of the federal constitution still attends it until it reaches the place of its destination. If the purchaser is there to receive it immediately upon its arrival at its place of destination, there is no time when the liquor can be intercepted by the law of the state. The shipper residing in another state can send his retail packages—so-called original packages - directly to the consumer, and the Wilson bill is rendered practically nugatory. This contention, however, it seems, can be determined from the language used. In my argument heretofore filed, reference was made to the opinion of Judge Simington *In re Langford*, 57 Fed. Rep., 570. It is said therein:

"Persons and goods arrive when they reach their destination. It is proper to say that after a man arrives at a city, he goes to his home therein, or to the home of a friend, or to his hotel. So goods, after arrival at the destination, are either delivered to the consignee after notice of arrival, or held until the freight is paid."

Of course, one does not arrive at his destination until he reaches the point to which he intended to go, but he may arrive in a state long before his destination is

reached. It is made in some states an offense to bring diseased cattle or hogs into the state. So, some cities have ordinances prohibiting the bringing into the city of any persons infected with a contagious disease, or clothing or goods so infected. I do not think any case can be found in which it is even urged that the law is not violated whenever the diseased live stock or diseased persons or infected clothing or goods have been brought within the limits prohibited, notwithstanding they have not yet reached the place of their destination. It would be an absurd claim, in case one were arrested for bringing into the state diseased cattle, for him to urge that his offense was not committed until the cattle had reached the place within the state to which they were consigned when outside of the state; *i. e.*, that he should be permitted to expose to contagion stock along the line for possibly 200 or 300 miles further before he became amenable to the law.

If "arrival in the state" means arrival at the place within the state to which the liquors were shipped, the same construction would apply to diseased cattle or infected goods, but when applied to such articles, the error of the construction becomes very manifest. As stated by the Iowa supreme court, "the language of the Wilson bill when considered with reference to the evil sought to be remedied, clearly indicates an intention on the part of congress to make such liquors the subject of state legislation and jurisdiction the moment they cross the boundary of Iowa and enter the state." It is evident, from the reasoning in the case of *Bowman v. Chicago, North-Western Railway Co.*, that had the Wilson bill been in force at the time the case was decided, a very different conclusion would have been reached by this court.

II.

The discussion of the first point has necessarily involved the second point presented by counsel, and what has been

said, together with the original argument for the defendant in error, sufficiently presents the views of the defendant.

III.

In the third paragraph, counsel discusses the question that if the intent of the Wilson bill is to permit the enforcement of state laws which prohibit the transportation of intoxicating liquors into the state from another state, then the Wilson bill as applied to the provisions of the law here in question, and to a transaction like the present, is in excess of congressional power. It is claimed that the proposition does not necessarily question the correctness of the ruling of this court *In re Rahrer*, 140 U. S., 545, because the act for which the defendant in that case was convicted was selling liquor in violation of the Kansas law, whereas the act complained of in the case at bar is an act of transportation. In other words, because of the decision *In re Rahrer*, the Wilson bill as applied to an act of sale is conceded to be within the power of congress, but it is contended as applied to an act of transportation, it is in excess of congressional power.

There is nothing in the constitution of the United States in express terms giving to congress the right to regulate transportation. Transportation is a means of commerce.

"Commerce is undoubtedly traffic," said Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat., 189, "but," he adds, "it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive of a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling, or of barter. If commerce does not

include navigation, the *government of the Union has no direct power over that subject.*"

The culminating act of all commerce is the exchange of commercial articles, the sale, the barter, the passing of property and title thereto from one to another. If we can imagine a transportation disconnected from commerce, such transportation is not within the power of congress to control. This court has held repeatedly that the general government has no control over transportation or commerce beginning and ending within a state. The only justification for holding that congress has power to regulate interstate transportation is because of the fact that it is comprehended in the term "commerce," as an auxiliary or aid thereto. To say, then, that congress may rightfully consent to a state prohibiting the sale of an article which is the subject of interstate commerce, the sale being the ultimate act, for the protection of which the commercial clause of the constitution is extended to transportation as an auxiliary thereto, and has no power to consent to a state prohibiting or regulating every step in the commercial act which culminates in such sale, appears to have no foundation in reason.

There is nothing sacred about transportation. As a federal question, it has no existence except as it is used as an aid to commerce, the act of which culminates in buying and selling. If congress has rightfully taken from intoxicating liquor its character as a subject of interstate commerce, so that the law of the state may prevent its being sold, and because of the law of the state it becomes a contraband article within the state, it necessarily follows that the transportation of intoxicating liquors in the state from the state line to a place within the state, is not protected by the commerce clause of the constitution. When federal protection from the sale of the article is removed, federal protection over a means of effectuating such sale necessarily falls with it.

I cannot agree with the counsel that the Iowa law does not prohibit the traffic in intoxicating liquors. The state-

ment is too broad. The law prohits the manufacture, sale, keeping for sale or transportation of intoxicating liquors to be used as a beverage. It permits, under certain restrictions, sales for mechanical, medicinal or culinary purposes, but the traffic of liquors for other purposes is entirely prohibited. The Iowa law is not like the Dispensary Act of South Carolina, construed in *Scott v. Donald*, 165 U. S., 58.

The Iowa law was enacted by virtue of its police powers which were never surrendered to the federal government. This power is recognized by many decisions of this court. The difficulty is in determining where the police powers of a state end and where the power of congress begins, but any argument which either denies the existence of a power, or which would seek to limit it within certain lines, based upon the assumption that the state may abuse that power, does not commend itself to my judgment. The language of Justice Mathews in the *Bowman case* quoted by counsel with all deference to the distinguished justice, in my judgment did not strengthen his conclusion. To say that a state may not exercise an existing power and right because, forsooth, at some time it may make an improper use of that power, or enact laws ostensibly to secure the health and comfort and ~~business~~ of the community, but really for the purpose of gaining some unfair advantage over the industries of another state, is overthrowing the presumption that all public officers or legislatures, state or national, will in good faith perform their patriotic duty under the constitution. The same argument might, with equal propriety, be applied to restrict the powers of congress, or of the federal government. But in either case, in my judgment, no light is thrown upon the question, what are the powers of the state or the federal government, to assume that if such powers be conceded to either, it may arrogate to itself further power which would encroach upon the rights of the other.

It is argued in behalf of plaintiff that, if the statute in question is sustained as a valid exercise of legislative power, then nothing stands in the way of the destruction, by the legislative department, of the constitutional guarantees of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

The whole argument of the counsel in the third paragraph is predicated upon the idea that if the law of Iowa prohibiting the transportation of intoxicating liquors from one point to another within the state in any way affects interstate commerce, such law was enacted by virtue of a power, assumed by the state to regulate such commerce. Many laws rightfully enacted under the police powers of a state have an effect, directly or indirectly, upon interstate commerce. Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat., 1, at page 204, says:

"So, if a state, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other, which remains with the state, and may be executed by the same means. All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct, to establish their identity.

"In our complex system, presenting the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all power not delegated to the union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective

governments to execute their acknowledged powers, would often be of the same descrip ion, and might, sometimes, interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

I do not contend for a moment that the state has power to regulate interstate commerce, but do contend that in the exercise of its police powers, it may pass any law which, in the judgment of the legislature tends to conserve the peace, the prosperity, the health and well being of its citizens; and further, that the judgment of the legislature as to what laws are necessary for these ends, is conclusive, so long as such laws do not infringe upon the exclusive power of congress, or are in conflict with the laws of congress enacted under the powers delegated to it.

Before the adoption of the federal constitution, the states had full power of sovereignty. This included the right to determine what should be imported into the state, or the terms upon which imports should be received, and the full power to regulate commerce, not only internal, but with the other states or foreign nations. These rights inhered in the sovereignty of the state. They were not conferred by the constitution, as Chief Justice Marshall said in the opinion quoted by the counsel for the plaintiff in error. When the chief justice said: "That right derives its source from those laws whose authority is recognized by civilized man throughout the world," he referred not to statute law, or to constitutional law, but to the great economic laws, – laws of self interest which throughout all history had been potent in opening the markets of one country to the products of another. No reference was made to any unwritten constitution which prohibited the states, prior to the adoption of the constitution, from having absolute control over all questions relating to internal and external commerce. The constitution delegated to congress power to regulate interstate commerce.

In re Rahrer, 140 U. S., 545, Chief Justice Fuller says:

"The power of the state to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity, is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the constitution of the United States, and essentially exclusive. And this court has uniformly recognized state legislation, legitimately for police purposes, as not, in the sense of the constitution, necessarily infringing upon any right which has been confided expressly or by implication to the national government."

In *Mugler v. State of Kansas*, 123 U. S., 623, referring to *Bartemeyer v. Iowa*, 18 Wall., 129; *Beer Co. v. Mass.*, 97 U. S., 33, this court says:

"These cases rest upon the acknowledged right of the states of the Union to control their purely internal affairs, and in doing so, to protect the health, morals and safety of their people by regulations that do not interfere with the execution of the powers of the general government, or violate rights secured by the constitution of the United States. The power to establish such regulations, as was said in *Gibbons v. Ogden*, 9 Wheat., 203, reaches everything within the territory of the state not surrendered to the national government."

In the *Bowman case*, 125 U. S., 465, Justice Mathews approved of the following language from *Railroad Co. v. Husen*, 95 U. S., 465:

"While we unhesitatingly admit that the state may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering from contagious diseases, or convicts, etc., from entering the state; while for the purpose of self-protection it may establish quarantine and inspection laws, it may not interfere with the transportation into or through the state *beyond what is absolutely necessary for its self-protection.*"

It is said in *Sherlock v. Alling*, 93 U. S., 99:

"In conferring upon congress the regulation of commerce, it was never intended to cut the states off from legislating upon a subject relating to the life, health and liberty of its citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the constitution."

In *Plumley v. Massachusetts*, 155 U. S., 461, this court upheld the statutes of Massachusetts prohibiting the sale of oleomargarine, even in original packages, which was colored to make it look like natural butter, and says:

"The language we have quoted from *Leisey v. Hardin* must be restrained in its application to the case actually presented for determination, and does not justify the broad contention that the state is powerless to prevent the sale of articles manufactured in or brought from another state and subjects of traffic and commerce, if their sale may cheat the people into purchasing what they did not intend to buy, and which is wholly different from what its contents and appearance import."

By a parity of reasoning it cannot be construed to justify the contention that the state is without power to prevent the sale of articles which are detrimental to the health and morals and prosperity of the people of the state.

In *Powell v. Pennsylvania*, 127 U. S., 678, this court said:

"The legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk, or cream from unadulterated milk, to take the place of butter produced from unadulterated milk, or cream from unadulterated milk, will promote the public health and prevent frauds in the sale of such articles. If all that can be said of this legis-

lation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine as an article of food, their appeal must be to the legislature, or to the ballot-box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government."

In *New York, N. H. & H. R. R. Co. v. New York*, 165 U. S., 628, it is said:

"According to numerous decisions of this court (some of which are cited in the margin), sustaining the validity of state regulations enacted under the police powers of the state, and which incidentally affected commerce among the states and with foreign nations, it was clearly competent for the state of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the car or suspended therefrom, although such cars may be employed in interstate commerce. While the laws of the states must yield to acts of congress passed in execution of the powers conferred upon it by the constitution (*Gibbons v. Ogden*, 9 Wheat. 1, 211), the mere grant to congress of the power to regulate commerce with foreign nations and among the states did not, of itself and without legislation by congress, impair the authority of the states to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people."

In *Dent v. West Virginia*, 129 U. S., 114, this court held that:

"The power of a state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure, or tend to secure, them against the consequences of ignorance and incapacity, as well as of deception and fraud."

In *Emmert v. The State of Missouri*, 156 U. S., 296, Mr. Justice Gray reviewed the former decisions of this court and sustained the Missouri statute requiring the license to be paid by peddlers as a proper exercise of the police powers of the state, and not an invasion of the powers of congress to regulate and control commerce.

State v. Wheelock, 95 Iowa, 977,

In *Commonwealth v. Zelt*, 138 Pa., 615, it was held that the prohibition of the sale of imported intoxicating liquors in original packages to minors and persons of known intemperate habits, is a valid exercise of the police powers of the state, and not in conflict with the United States constitution.

The Iowa law in question was enacted by the legislature in the exercise of its police power to regulate its own internal affiairs and to conserve the public health, morals and prosperity. The state did not claim power to regulate interstate commerce, nor does the fact that interstate commerce is to some degree affected thereby, prove that it is an exercise of power to regulate interstate commerce.

This police power of the state was not derived from the constitution of the United States, nor was it derived through the consent of congress, but it was inherent in the sovereignty of the state, was never surrendered to congress, and it reaches to everything within the state and relates to every subject upon which the state may legislate, which include all except those given by the constitution to the exclusive control of congress.

Mr. Justice Daniel, in *Cooley v. The Board of Regents*, 12 Howard, 299, at page 326, says:

"The power delegated to congress by the constitution relates properly to the terms on which commercial engagements may be prosecuted; the character of the articles which they may embrace; the permission or terms according to which they may be introduced; and do not necessarily or even naturally extend to the means of precaution and safety adopted within the waters and limits of the states by the authority of the latter for the preservation of vessels and cargoes, and the lives of navigators or passengers."

In *Bowman v. Chicago & Northwestern Ry. Co.*, 125 U. S., 465, the court quotes the language of Justice Catron in the *License cases*:

"The assumption is that the police power was not touched by the constitution, but left to the states as the

constitution found it. This is admitted, and whenever a thing, from character or condition, is of a description to be regulated by that power in the state, then the regulation may be made by the state, and congress cannot interfere. But this must always depend on facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to, and is subject to be regulated as a part of, foreign commerce, or of commerce among the states. If, from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the state, that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction; and, as an incident to this power, a state may use means to ascertain the fact."

The opinion of Judge Catron also quoted in *Bowen v. Railway Co.*, denies to the state the power to determine what shall or shall not be the subjects of commerce. He says upon the theory, that the state had power to determine what shall be articles of commerce:

"The power to regulate commerce, instead of being paramount over the subject, would become subordinate to the state police power; for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus circumscribe its scope and operation is, in effect, a controlling one."

The language of Judge Catron in the *License cases*, 5 How., 504, did not receive the approval of the majority of the court. Only Judge Nelson, so far as it appears in the report, concurred with him. But by its approval in the *Bowman case*, it must be considered as the enunciation of this court.

It is apparent, then, that some articles which may be transported into a state from another state, may not be the subjects of interstate commerce. It is also deducible from the opinion of this court that congress alone has the power to determine what shall or shall not be the subjects of interstate commerce. This power is included within

the power to regulate commerce. There are, however, some very respectable authorities that hold that it is within the exercise of the police powers of the state to determine what is necessary to be prohibited from sale in the markets of the state for the protection of the health, morals and well-being of the citizens, and if the laws therefor were enated without discrimination against the citizens of other states, and in good faith for the purpose of protecting the people of the state from the evil which the legislature determined the welfare of the state demands, then such articles could not be considered articles of commerce.

Something of this idea appears in *Scott v. Donald*, 165 U. S., 107. Mr. Justice Shiras, for the court, says:

"So long, however, as state legislation continues to recognize wines, beer and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of federal courts to afford to such use and commerce the same measure of protection, under the constitution and laws of the United States, as is given to other articles."

And again in the same case:

"It is sufficient for the present case to hold, as we do, that when a state recognizes the manufacture, sale and use of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in, and importing them from other states: that such legislation is void as a hindrance to interstate commerce, and an unjust preference of the products of the enacting state as against similar products of other states."

This language is inconsistent with the former utterances of the court, except upon the theory that the Wilson bill has removed from intoxicating liquor its character as an article of interstate commerce when the laws of the state do not recognize it as an article of lawful consumption and commerce.

But the power to regulate interstate commerce necessarily involves the power to determine what shall or shall not be regulated or considered the subject of interstate

commerce. Congress, possessing the power to regulate interstate commerce, must, without question, have the power to determine "the character of the articles which they (commercial engagements) embrace." It has been held that the inaction of congress with reference to subjects of commerce, national in their character, must be accepted as the will of congress that commerce in such subjects should be free and untrammeled.

In re Rahrer, 140 U. S., 545, it is said:

"No reason is perceived why, if congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competence to do so. The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of congress, when exercised, but upon the question whether the inaction of congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the states. We recall no decision giving color to the idea that, when congress acted, its action would be less potent than when it kept silent. The framers of the constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge. The manner of that disposition brought into determination upon this record involves no ground for adjudging the act of congress inoperative and void."

The effect, then, of the Wilson bill is to remove the interstate commercial character of intoxicating liquors so that the same, when brought within the jurisdiction of a state, are subject to the police regulations of such state. This is by no means delegating to the state power to legislate upon a subject exclusively within the control of congress, but it is prescribing a general, common rule which operates throughout the whole United States, that commerce in intoxicating liquors shall not be henceforth free and untrammeled, but upon entering into a state, is divested of its commercial character and becomes forthwith subject to the laws of the state.

In *Brown v. Maryland*, 12 Wheat., 442, Chief Justice Marshall said:

"It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports, to escape the prohibition in the constitution."

It is contended that the later cases hold that the protection of the commercial clause of the constitution continues until there has been a sale by the importer. The counsel for the plaintiff concedes that the Wilson bill can properly be considered as releasing intoxicating liquors from their character as articles of interstate commerce after they reach their destination and before sale. That is, the Wilson bill may be considered to be a withdrawal of federal protection from such liquors before the interstate commerce act was completed by a sale of the liquors. Certainly, if it is competent for congress to withdraw the federal protection from a subject heretofore recognized as a subject of interstate commerce, at one point of time, or at one stage of the commercial transaction, why, in the nature of things, may not congress, with equal propriety, select another time or another stage in the commercial transaction in which the federal protection is withdrawn? It is the exercise of the same power exactly, and the same kind of power, fixing the point at which liquors lose their character as subjects of interstate commerce at one time, as it is fixing it at another time or stage in the commercial engagement. There can be no distinction made. If, as our friends concede, it is within the province of congress to declare intoxicating liquors, immediately upon their arrival at their place of destination and before sale, sub-

ject to the laws of the state, and without the protection of the commercial clause of the constitution, I think it must be apparent that it is equally within the power of congress to declare such liquors subject to the laws of the state and without the protection of the commercial clause of the constitution immediately upon their arrival at any point within the state, or upon their crossing the boundary line.

The power of the state to prohibit the transportation from a point within the state to another point within the state, of contraband articles, is not derived from the Wilson bill, or the silence of congress, or from the federal constitution. Unless the power to legislate upon this subject was granted by the constitution of the United States to congress, then that power was retained by the states.

In regard to intoxicating liquors manufactured or produced within the state, I do not think the power of the state to pass such a law would be questioned. It is a valid law, except so far as it may be in conflct with the law of congress, or the will of congress, indicated either by its silence or by its enactments. But the Wilson bill has expressed the will of congress with reference to intoxicating liquors: that they shall be, upon their *arrival in such state*, subject to the operation of the laws of such state enacted in the exercise of its police power, to the same extent and in the same manner as though such liquors had been produced in such state. The construction contended for by the plaintiff in error would strike out one-half or more of the Wilson bill, and would deny to congress the power to determine what articles shall be the subjects of interstate commerce, or when the protection of the commercial clause of the federal constitution shall cease.

The decision of the Iowa supreme court in the case at bar is in harmony with the decision of this court in *Re Rahrer*, and is the only construction of the Wilson bill

that will give force and effect to all of its language and effectuate the end and the object sought to be obtained in its enactment.

Respectfully submitted,

MILTON REMLEY,
Attorney-General,
For the State.

RHODES *v.* IOWA.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 21. Argued February 23, 1898. — Decided May 9, 1898.

Section 1553 of the code of Iowa, which provides that "if any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such intoxicating liquors in such county, such company, corporation or person so offending, and each of them, and any agent of said company, corporation or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offence and pay costs of prosecution, and the costs shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid," cannot be held to apply to a box of spirituous liquors, shipped by rail from a point in Illinois to a citizen of Iowa at his residence in that State while in transit from its point of shipment to its delivery to the consignee, without causing the Iowa Law to be repugnant to the Constitution of the United States.

Moving such goods in the station from the platform on which they are put on arrival to the freight warehouse is a part of the interstate commerce transportation.

THE case is stated in the opinion.

Mr. Robert Mather for plaintiff in error.

Mr. Milton Remley, attorney general of the State of Iowa, for defendant in error.

MR. JUSTICE WHITE delivered the opinion of the court.

The Chicago, Burlington and Quincy Railroad Company was, in 1891, a common carrier, incorporated under the laws of

Illinois, and operated among others a line of railway from Dallas, Illinois, to Burlington, Iowa, and beyond said point. The Burlington and Western Railway Company was, at the same date, a common carrier, incorporated under the laws of Iowa, and operated a line of railway from Burlington, Iowa, to Oskaloosa in that State, with stations at intervening points, one of which was Brighton in Washington County. Both of these corporations had a depot at Burlington, which they jointly used. The two carriers had, at the time stated and for years previous thereto, between themselves joint freight tariffs, by which transportation, under a single through way bill, was given to merchandise from any station on either of the lines to any station on the line of the other.

In August, 1891, the Dallas Transportation Company delivered to the Chicago, Burlington and Quincy Railroad at Dallas, Illinois, a wooden box stated to contain groceries consigned to William Horn, Brighton, Iowa. It had been the habit of the agent of the Dallas company before this date to ship intoxicating liquors over the Chicago, Burlington and Quincy. The box in question was receipted for as through freight and was billed through in accordance with the custom above stated, was taken to Burlington, Iowa, there delivered to the Burlington and Western company, by whom it was carried to Brighton. On its arrival there, the package was placed by the trainmen on the station platform, and shortly afterwards the plaintiff in error, who was the station agent of the Burlington and Western, in the discharge of his duties opened the door of the freight house and moved the box into a freight warehouse, which was about six feet from the platform. In about an hour thereafter the box was seized by a constable under a search warrant, on the ground that it contained intoxicating liquors, which proved to be the truth, and subsequently the liquor was condemned and ordered to be destroyed, and the order was executed. At the time of the seizure the freight charge due to the railways was unpaid. It was admitted that there was nothing on the package to notify the receiving railway of its contents, unless such knowledge can be imputed from the nature of the previous dealings of the Dallas com-

pany with the railway. There was, however, testimony showing that the railroad agent who moved the box from the freight platform to the warehouse had reason to know or suspect that it contained liquor since it was proven that, before the arrival of the box at Brighton, a mail carrier called at the station and asked for a package consigned to William Horn, stating that one was expected from Dallas, and that it would contain intoxicating liquor.

The plaintiff in error was proceeded against by information before a justice of the peace, charging him with the unlawful transportation of intoxicating liquors conveyed from Burlington to Brighton, Iowa. This prosecution was under the provisions of the statutes of the State of Iowa, to which we shall hereafter refer. He was convicted and sentenced to pay a fine of $100. An appeal from this sentence was taken to the district court, where it was affirmed, in which court, among other defences, it was alleged that the package in question was not subject to the jurisdiction of the State of Iowa, because at the time of its removal from the platform to the freight warehouse it was in course of interstate commerce transportation. The district court having affirmed the conviction, an appeal was taken to the Supreme Court of the State of Iowa, where the judgment below was also affirmed. *State* v. *Rhodes*, 90 Iowa, 496. To this judgment of affirmance this writ of error is prosecuted.

The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to the box in question whilst it was in transit from its point of shipment, Dallas, Illinois, to its delivery to the consignee at the point to which it was consigned. That is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois, before the arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States.

In *Bowman* v. *Chicago & Northwestern Railway*, 1888, 125 U. S. 465, this court was called upon to determine the validity of a statute of the State of Iowa, which it was asserted was repugnant to the third clause of section 8 of article I of the

Constitution of the United States, because its provisions amounted to a regulation of interstate commerce. The facts upon which the controversy then presented arose were briefly as follows: Kegs of beer were offered in the State of Illinois to a common carrier operating a line of railway in the States of Illinois and Iowa. The beer was consigned to a point in Iowa, and the carrier refused to receive it, on the ground that the statute of Iowa made it unlawful to bring intoxicating liquors within the limits of that State, except when accompanied with a specified certificate, which the Iowa law provided should be granted under particular and exceptional conditions. The one by whom the beer was tendered to the carrier in the State of Illinois thereupon sued the railroad company for the damages claimed to have arisen from its refusal to receive and carry the merchandise. The railway company defended on the ground that it was justified in its refusal because of the provision of the Iowa statute. This, on the other hand, was asserted not to be an adequate defence, because it was claimed that the Iowa statute was wholly void, as it constituted a regulation of interstate commerce. The sole issue arising therefrom was whether the Iowa law protected the refusing carrier, and thus involved determining whether the statute of the State was repugnant to the Constitution of the United States. After great consideration, it was held that the law of the State of Iowa, in so far as it affected interstate commerce, was repugnant to the interstate commerce clause of the Constitution, and was void. It was decided that the transportation of merchandise from one State into and across another was interstate commerce, and was protected from the operation of state laws from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned. The court in the course of its opinion adverted to the question whether goods so shipped continued to be protected by the interstate commerce clause after their delivery to the consignee and up to and including their sale in the original package by the one to whom they had been delivered, but did not decide the question, as it was

not essential to do so. Referring to the subject, however, the court said (pp. 499–500):

"It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers cannot be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one State, they belong to all, and cannot be exercised severally and independently. The attempt would necessarily produce that conflict and confusion which it was the very purpose of the Constitution by its delegations of national power to prevent.

"It is easier to think that the right of importation from abroad, and of transportation from one State to another, includes, by necessary implication, the right of the importer to sell unbroken packages at the place where the transit terminates; for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown* v. *Maryland*, 12 Wheat. 419, as to foreign commerce, with the express statement, in the opinion of Chief Justice Marshall, that the conclusion would be the same in a case of commerce among the States. But it is not necessary now to express any opinion upon the point, because that question does not arise in the present case. The precise line which divides the transaction, so far as it belongs to foreign or interstate commerce, from the internal and domestic commerce of the State, we are not now called upon to delineate. It is enough to say that the power to regulate or forbid the sale of a commodity, after it has been brought into the State, does not carry with it the right and power to prevent its introduction by transportation from another State."

Subsequently, in *Leisy* v. *Hardin*, (1890) 135 U. S. 100, the question which was thus reserved in the *Bowman case* arose for adjudication, and it was held that the right to sell the imported merchandise in the original package free from inter-

ference of state laws was protected by the Constitution of the United States, as up to such sale the goods brought into the State were not commingled with the mass of property in the State. Summing up its conclusions the court said (p. 124): "The plaintiffs in error are citizens of Illinois, are not pharmacists and have no permit, but import into Iowa beer which they sell in original packages, as described. Under our decision in *Bowman* v. *Chicago &c. Railway Co.*, *supra*, they had the right to import this beer into that State, and, in the view which we have expressed, they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time we hold that, in the absence of Congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or non-resident importer."

The statute of the State of Iowa, under which the prosecution now before us was instituted, is as follows:

"If any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation or person so offending, and each of them, and any agent of said company, corporation or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offence, and pay costs of prosecution, and the costs shall include a reasonable attorney fee to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail

until such fine and costs of prosecution are paid. The offence herein defined shall be held to be complete, and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of the State to issue the certificate herein contemplated to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires, as shown by the county records. Provided, however, that the defendant may show as a defence hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him." (Iowa Code, section 1553, paragraph 2410, McClain's Annotated Code of Iowa.)

This statute is identical with the one which was held to be unconstitutional in the *Bowman case*, except that the latter contained the words "knowingly bring within this State," these words having been stricken out by an amendment adopted after the decision in the *Bowman case*. In other words, the statute which was under review in the *Bowman case* provided, "if any express company, railway company or any agent or person in the employ of any express company, or of any common carrier, or if any other person shall knowingly bring within this State, or transport or convey between points or from one place to another within the State," whilst the statute now before us provides exactly the same thing, except that the words "knowingly bring within this State" are omitted. It is hence manifest that the present statute, as interpreted by the Supreme Court of Iowa, has exactly the significance it would have did it contain the words found in the act reviewed in the *Bowman case*. It follows that the law before us now, as interpreted below, is the exact equivalent of the statute which has once before been declared by this court to be repugnant to the Constitution. This result in reason is inevitable, since the court below held that the words, as found in the present law, were not confined to transporta-

tion of commodities originating within the State, but related to shipments made from another State. This ruling hence subjects shipments made from another State to the control of the statute at once on the arrival of the merchandise within the territorial limits of the State, and before the completion of the interstate shipment, as completely as if the words "bring within this State" were yet in the statute. As it was held in the *Bowman case* that the power to ship from one State into another embraced of necessity the right to have the goods carried to the place of destination, and be delivered at that point to the consignee, it follows that an interpretation of the present law which gives the State the right to stop the goods shipped into the State at the state line, and before their arrival at destination, is directly within the rule announced in the *Bowman case.*

The fundamental right which the decision in the *Bowman case* held to be protected from the operation of state laws by the Constitution of the United States was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract. This protection of the Constitution of the United States is plainly denied by the statute now under review, as its provisions are interpreted by the court below. The power which it was held in the *Bowman case* the State did not possess was that of stopping interstate shipments at the state line by breaking their continuity and intercepting their course from the point of origin to the point of consummation. The right of a State to exert these very powers is plainly upheld by the decision rendered below. It follows that if the ruling in the *Bowman case* is applicable to the question here presented, it is decisive of this controversy, and must lead to a reversal of the judgment below rendered. The claim is, however, and it was upon this ground that the court below rested its judgment, that under and by virtue of the provisions of the act of Congress of August 8, 1890, c. 728, 26 Stat. 313, the ruling in the *Bowman case* is no longer apposite, as the effect of the act of Congress in question was to confer upon the State of Iowa

the power to subject to its statutory regulations merchandise shipped from another State the moment it reached the line of the State of Iowa, and before the consummation of the contract of shipment by arrival at its destination and delivery there to the consignee. And it is to this question that the discussion at bar has mainly related, and upon which a decision of the cause really depends.

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but whilst it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale, on the other hand, it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation by delivery of the interstate commerce transaction. To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. *In re Rahrer*, 140 U. S. 545.

Did the act of Congress referred to operate to attach the legislation of the State of Iowa to the goods in question the moment they reached the state line, and before the completion of the act of transportation, by arriving at the point of consignment and the delivery there to the consignee is then the pivotal question? The act of Congress is as follows:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt

therefrom by reason of being introduced therein in original packages or otherwise."

The words "shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory," in one sense might be held to mean arrival at the state line. But to so interpret them would necessitate isolating these words from the entire context of the act, and would compel a construction destructive of other provisions contained therein. But this would violate the fundamental rule requiring that a law be construed as a whole, and not by distorting or magnifying a particular word found in it. It is clearly contemplated that the word "arrival" signified that the goods should actually come into the State, since it is provided that "all fermented, distilled or other intoxicating liquors or liquids transported into a State or Territory," and this is further accentuated by the other provision, "or remaining therein for use, consumption, sale or storage therein."

This language makes it impossible in reason to hold that the law intended that the word "arrival" should mean at the state line, since it presupposes the coming of the goods into the State for "use, consumption, sale or storage." The fair inference from the enumeration of these conditions, which are all-embracing, is that the time when they could arise was made the test by which to determine the period when the operation of the state law should attach to goods brought into the State. But to uphold the meaning of the word "arrival," which is necessary to support the state law, as construed below, forces the conclusion that the act of Congress in question authorized state laws to forbid the bringing into the State at all. This follows from the fact that if arrival means crossing the line, then the act of crossing into the State would be a violation of the state law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the state statute attached and operated beyond the state line confessedly before the time when it was intended by the act of Congress it should take effect.

But the subtle signification of words and the niceties of verbal distinction furnish no safe guide for construing the act of Congress. On the contrary, it should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create, and of defeating the wrong which it was its purpose to frustrate. Undoubtedly the purpose of the act was to enable the laws of the several States to control the character of merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the act of Congress manifests no purpose to confer upon the States the power to give their statutes an extraterritorial operation so as to subject persons and property beyond their borders to the restraints of their laws. If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman case*, the inevitable consequence of allowing a state law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders, and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a state statute. The force of this view is well illustrated by the conclusions of the court below, where it is said:

"Was the defendant, in the removal of the liquor, engaged in transporting or conveying it within the meaning of our statute? The language of the statute is broad enough to cover the act of defendant in removing the liquor from the platform to the freight room of the depot. He was one of the instruments necessary to complete the act of transportation. If it be not so, then clearly he is within the terms of the act, as he conveyed 'the liquor from one point to another within this State.' His guilt is not to be determined by the distance

he conveyed the package, but his conveying it any distance was a violation of the law. With the propriety of legislation, making such an act a crime, and with the severity of the punishment attached to doing the act, we have nothing to do."

If it had been the intention of the act of Congress to provide for the stoppage at the state line of every interstate commerce contract relating to the merchandise named in the act, such purpose would have been easy of expression. The fact that such power was not conveyed, and that, on the contrary, the language of the statute relates to the receipt of the goods "into any State or Territory for use, consumption, sale or storage therein," negatives the correctness of the interpretation holding that the receipt into any State or Territory for the purposes named could never take place. Light is thrown upon the purpose and spirit of the act by another consideration. The *Bowman case* was decided in 1888, the opinion in *Leisy* v. *Hardin* was announced in April, 1890, the act under consideration was approved August 8, 1890. Considering these dates, it is reasonable to infer that the provisions of the act were intended by Congress to cause the legislative authority of the respective States to attach to intoxicating liquors coming into the States by an interstate shipment, only after the consummation of the shipment, but before the sale of the merchandise, that is, that the one receiving merchandise of the character named should, whilst retaining the full right to use the same, no longer enjoy the right to sell free from the restrictions as to sale created by state legislation, a right which the decision in *Leisy* v. *Hardin* had just previously declared to exist.

This view gives meaning and effect to the language of the act providing that such merchandise "shall not be exempt therefrom" (legislative power of the State) by reason of being introduced therein in "original packages or otherwise." These words have no place or meaning in the act if its purpose was to attach the power of the State to the goods before the termination of the interstate commerce shipment. The words "original packages" had, at the time of the passage of the act by the decisions of this court, acquired with reference

to the construction of the Constitution a technical meaning, signifying that the merchandise in such packages was entitled to be sold within a State by the receiver thereof, although state laws might forbid the sale of merchandise of like character not in such packages.

Whilst it is true that the right to sell free from state interference interstate commerce merchandise was held in *Leisy* v. *Hardin* to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State. On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of state authority should not without the clearest implication be held to imply the purpose of subjecting to state laws a contract which in its very object and nature was not susceptible of such regulation even if the constitutional right to do so existed, as to which no opinion is expressed. And this view is cogently illustrated by the opinion in the *Bowman case*, where it was said (pp. 486–487):

"Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery, and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall* v. *De Cuir*, 95 U. S. 485, 488, is exactly in point. It was there said: 'But we think it may safely be said that state legislation, which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress.' The statute now under consideration, in our opinion, occupies that position. It does not act upon the

business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up within and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced. It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more; it could prescribe rules by which the carrier must be governed within the State, in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is

untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be.'"

And it was doubtless this construction which caused the court to observe in the opinion in *In re Rahrer*, 140 U. S. 545, 552, that the act of Congress "divests them (objects of interstate commerce shipment) of that character at an earlier period of time than would otherwise be the case." We think that interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee, and of course this conclusion renders it entirely unnecessary to consider whether if the act of Congress had submitted the right to make interstate commerce shipments to state control it would be repugnant to the Constitution.

It follows from this conclusion that as the act for which the plaintiff in error was convicted, and which consisted in moving the goods from the platform to the freight warehouse, was a part of the interstate commerce transportation, and was done before the law of Iowa could constitutionally attach to the goods, the conviction was erroneous, and the judgment below is, therefore,

Reversed.

Mr. Justice Gray, with whom concurred Mr. Justice Harlan and Mr. Justice Brown, dissenting.

Mr. Justice Harlan, Mr. Justice Brown and myself are constrained to dissent from this judgment, which appears to us to deny due effect to the police power, reserved to each State by the Constitution of the United States, and recognized by Congress in the act of August 8, 1890, c. 728, commonly known as the Wilson act. 26 Stat. 313.

The purpose and effect of this act may be best understood by recalling the history of the law upon the subject.

In order to keep this opinion within reasonable compass,

we shall, in referring to the previous decisions of this court, confine ourselves, as far as possible, to those decisions which directly relate to the traffic in intoxicating liquors.

The regulation of the manufacture, sale and use of intoxicating liquors has always been recognized as a subject peculiarly appertaining to the police power of the several States respectively. *License cases*, 5 How. 504; *Bartemeyer* v. *Iowa*, 18 Wall. 129; *Beer Co.* v. *Massachusetts*, 97 U. S. 25; *Foster* v. *Kansas*, 112 U. S. 201; *Mugler* v. *Kansas*, 123 U. S. 623; *Kidd* v. *Pearson*, 128 U. S. 1; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31.

Upon the question how far the police power reserved to each State over this subject is affected by the grant to Congress of the power to regulate commerce among the several States, there have been conflicting opinions, and even varying decisions, at different periods.

The earliest cases which came before this court, concerning the extent of the police power of each State over intoxicating liquors within its borders, were *Thurlow* v. *Massachusetts*, *Fletcher* v. *Rhode Island* and *Peirce* v. *New Hampshire*, decided in 1847, and reported under the name of *The License cases*, 5 How. 504.

In *Peirce* v. *New Hampshire*, a statute of New Hampshire, prohibiting sales of intoxicating liquors by any person without a license from municipal authorities, and authorizing licenses to be granted only to persons residing within the State, was held by all the justices to be constitutional and valid, as applied to a barrel of intoxicating liquors, brought into New Hampshire from another State, and sold in New Hampshire by the importer, in the same barrel, unbroken and in the same condition in which it had been brought in — there having been no legislation of Congress upon the subject.

That decision was afterwards repeatedly cited with approval. *Gilman* v. *Philadelphia*, 3 Wall. 713, 730; *Beer Co.* v. *Massachusetts*, 97 U. S. 25, 33; *Mobile County* v. *Kimball*, 102 U. S. 691, 701; *Mugler* v. *Kansas*, 123 U. S. 623, 657, 658. And in several cases the validity of statutes of a State, taxing the sale of intoxicating liquors brought from another State, was

treated as depending upon the question whether the statutes made any discrimination in favor of liquors manufactured within the State. *Hinson* v. *Lott*, 8 Wall. 148; *Tiernan* v. *Rinker*, 102 U. S. 123; *Walling* v. *Michigan*, 116 U. S. 446, 460.

The question whether the power of Congress to regulate commerce with foreign nations and among the several States is exclusive, or only paramount, was a subject of much diversity of opinion from an early period until 1851, when this court, speaking by Mr. Justice Curtis, in *Cooley* v. *Board of Wardens*, 12 How. 299, laid down this principle: When the nature of the particular subject in question is such as to demand a single uniform rule, operating equally throughout the United States, the power of Congress is exclusive; but when the subject is of such a nature as to require different systems of regulation, drawn from local knowledge or experience, and conformed to local wants, it may be the subject of state legislation so long as Congress has not legislated. 12 How. 319, 320. The principle there laid down has become fully recognized and established in our jurisprudence. *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, 704; *Crandall* v. *Nevada*, 6 Wall. 35, 42; *Mobile County* v. *Kimball*, 102 U. S. 691, 701.

Wherever, from the nature of the subject, the power of Congress to regulate commerce is exclusive, the several States, of course, cannot legislate, even if there has been no legislation by Congress; or, as the proposition has been stated in another form, "where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the States, except in matters of local concern only, is repugnant to such freedom." *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 493.

The theory that the bringing of intoxicating liquors from one State into another, and the selling of them there in the packages in which they had been introduced, are subjects requiring to be regulated by a national and uniform rule, and therefore within the exclusive power of Congress, and wholly

free from state legislation, was not broached by any member of the court before the cases of *Bowman* v. *Chicago & Northwestern Railway*, 125 U. S. 465, and *Leisy* v. *Hardin*, 135 U. S. 100.

In *Bowman's case* Chief Justice Waite and two other justices dissented, and in *Leisy's case* three justices dissented; and the reasons for and against the decisions were stated at length in the opinions delivered in those cases. It will be sufficient, for our present purpose, to state the points there decided.

Each of those cases arose under the statutes of the State of Iowa, regulating the manufacture, the sale and the transportation of intoxicating liquors within the State.

Bowman v. *Chicago & Northwestern Railway*, decided by this court March 19, 1888, involved the validity of a provision of those statutes, (substantially similar to the provision now before us, as construed by the highest court of the State,) imposing a penalty upon any railroad company or other common carrier, or any agent of either, or any other person, that should knowingly bring within the State, or knowingly transport or convey between points or from one place to another within the State, for any other person or corporation, any intoxicating liquors, without first having obtained a certificate, from the auditor of the county to which it was consigned, or within which it was to be conveyed from place to place, certifying that the consignee was authorized by the laws of Iowa to sell such liquors. The majority of this court, upon a consideration of the whole statute, frankly recognized that "the provision in question has been adopted by the State of Iowa, not expressly for the purpose of regulating commerce between its citizens and those of other States, but as subservient to the general design of protecting the health and morals of its people and the peace and good order of the State, against the physical and moral evils resulting from the unrestricted manufacture and sale within the State of intoxicating liquors." 125 U. S. 475, 476. Nevertheless, the provision was held to be unconstitutional and void, as applied to a railroad company transporting intoxicating liquors into the State from another

State, upon the ground that the State "cannot, without the consent of Congress, express or implied, regulate commerce between its people and those of the other States of the Union in order to effect its end, however desirable such a regulation might be." 125 U. S. 493. The court took pains to distinguish the case from *Peirce* v. *New Hampshire*, above cited, and distinctly reserved the expression of any opinion upon the question whether the State had the right to regulate or prohibit the sale of the liquor by the importer in unbroken packages after it had been brought within the State. 125 U. S. 479, 499, 500.

But in *Leisy* v. *Hardin*, two years later, that question was distinctly presented for decision; and it was decided that the provision of the statutes of Iowa, prohibiting the sale of any intoxicating liquors, otherwise than for pharmaceutical, medicinal, chemical or sacramental purposes, and under a druggist's license from a county court of the State, was, as applied to a sale by the importer, and in the original packages, unbroken and unopened, of such liquors manufactured in and brought from another State, unconstitutional and void, as repugnant to the grant by the Constitution to Congress of the power to regulate interstate commerce. The majority of the court, in its opinion, delivered by the present Chief Justice, April 28, 1890, treated *Peirce* v. *New Hampshire* as overruled; and stated its own conclusions as follows: "The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer, which they sell in original packages, as described. Under our decision in *Bowman* v. *Chicago & Northwestern Railway*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time, we hold that, in the absence of Congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or non-resident importer." And it was said in that opinion that "the responsibility is upon Congress, so far as the regulation

of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action." 135 U. S. 123, 124.

Thereupon Congress immediately interposed, and by explicit legislation unequivocally manifested its purpose that no silence on its part should give rise to the presumption that it intended that either the transportation of intoxicating liquors from one State into another, or their sale in the latter State, even in the packages in which they had been brought, should be free, and beyond the reach of the police power of the State.

On May 14, 1890, Mr. Wilson, of Iowa, reported to the Senate, from the Committee on the Judiciary, a bill, which, as amended upon his motion on May 29, was passed August 8, 1890, enacting that "all fermented, distilled or other intoxicating liquors or liquids, transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." Congressional Record, 51st Congress, 1st sess. pt. 5, p. 4642; pt. 6, p. 5430; act of August 8, 1890, c. 728, 26 Stat. 313.

Soon after the passage of this act of Congress, the question of its constitutionality and effect was brought before this court in *Rahrer's case*, 140 U. S. 545. Intoxicating liquors, which had been sent, before the passage of this act, by their owners in Missouri to Rahrer in Kansas to be sold by him on their account, were, after the passage of the act, sold by him in Kansas as the agent of the consignors and in the original packages. This court unanimously held that Rahrer was liable to be prosecuted for such a sale under statutes of the State of Kansas, passed in 1889, which made no distinction between imported and domestic liquors.

The Chief Justice, in delivering the opinion of the majority of the court, said: "Congress has now spoken, and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature." 140 U. S. 560. The grant by the Constitution to Congress of the power to regulate interstate commerce, said the Chief Justice, "furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In so doing, Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws." "No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so." 140 U. S. 561, 562. "Congress did not use terms of permission to the State to act; but simply removed an impediment to the enforcement of the state laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State, not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction." "This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress. That act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a reënactment of the state law was required before it could have the effect upon imported which it had always had upon domestic property. Jurisdiction attached, not in virtue of the law of Congress, but because the effect of the latter was to place the property where jurisdiction could attach." 140 U. S. 564, 565.

The necessary effect of that decision is that the police power of each State includes the regulation of the transportation, as well as the sale, of all intoxicating liquors within its territory, except so far as affected by the grant by the Constitution to Congress of the power over interstate and foreign commerce; and that, so far as Congress manifests its intention that the interests of such commerce do not require its exemption from the exercise of the police power of the State, this power is unrestricted.

The opinions heretofore delivered in this court upon the effect of the act of Congress of 1890, although they do not decide, clearly imply, that the "arrival in such State," contemplated and intended by the act, is an arrival within the territorial limits and jurisdiction of the State. In *Rahrer's case*, the Chief Justice, in the passages already quoted, said that Congress by this act has declared that "imported liquors shall, upon arrival in a State, fall within the category of domestic articles of a similar nature," and has allowed "imported property to fall at once upon arrival within the local jurisdiction." 140 U. S. 560, 564. The natural meaning of these expressions is that imported liquors, upon arrival within the jurisdiction of the State, become at once subject to its jurisdiction. And in *Scott* v. *Donald*, 165 U. S. 58, the phrase used in the opinion of the majority of the court was, "upon arrival in a State," and, in the dissenting opinion, "upon their arrival within the State," without a suggestion in either opinion that the two phrases were not exactly synonymous, or that any "arrival within the State" was not an "arrival in the State." 165 U. S. 99, 102.

The case at bar directly presents the question of the meaning of the words "upon arrival in such State," as used by Congress in this act.

Chief Justice Marshall, when discussing the general meaning of the words "arrival" and "to arrive," said: "'To arrive' is a neuter verb, which, when applied to an object moving from place to place, designates the fact of 'coming to' or 'reaching' one place from another, or of coming to or reaching a place by travelling, or moving towards it. If the place

be designated, then the object which reaches that place has arrived at it. A person who is coming to Richmond has arrived when he enters the city. But it is not necessary to the correctness of this term, that the place at which the traveller arrives should be his ultimate destination, or the end of his journey. A person going from Richmond to Norfolk, by water, arrives within Hampton Roads, when he reaches that place; or, if he diverges from the direct course, he arrives in Petersburg, when he enters that town. This is, I believe, the universal understanding of the term." *The Patriot*, 1 Brock. 407, 411, 412.

If, as Chief Justice Marshall declared, it is the universal understanding of the term that it designates the fact of "coming to" or "reaching" a place by travelling or moving towards it, and does not require that the place at which the traveller arrives should be his ultimate destination, and consequently that a traveller arrives in a city or town when he enters that city or town, it would seem to follow that "arrival in the State" is complete when the person or the merchandise in question enters the State.

That such is the meaning of the word "arrival," as used in the act of Congress now in question, appears to us to be confirmed by the whole scope and by the obvious purpose of the act.

The act declares and enacts that all intoxicating liquors, "transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory" be subject to the effect and operation of its laws enacted in the exercise of its police powers, to the same extent and in the same manner as though they had been produced in it, "and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The act, in terms, includes all intoxicating liquors "transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein." If it be assumed that the words, "for use, consumption, sale or storage therein," are not restricted to the next preceding clause, "or remaining therein," but also extend back to the earlier clause, "trans-

ported into any State or Territory," still the effect of the words is to cover all intoxicating liquors, transported into or remaining in the State for any possible purpose, except that of being transported through the State to another State or country. All such liquors are "upon arrival in such State" to be subject to the operation and effect of the laws enacted by the State "in the exercise of its police powers," to the same extent and in the same manner as if the liquors had been produced within its limits. And it is expressly provided that intoxicating liquors shall not be exempt from the exercise of the police powers of the State, "by reason of being introduced therein in original packages or otherwise." The phrases "transported into any State," "upon arrival in such State," and "introduced therein," would seem to have been used as substantially equivalent.

The act makes no mention of arrival at a specific destination or place in the State. Its whole object, as appears upon its face, as well as from the circumstances which led to its enactment, is not to define when a particular voyage or transit shall be considered at an end; but to assure to the State, throughout its territorial jurisdiction, the full exercise of its police powers over the subject of intoxicating liquors. And we find nothing in the act to indicate an intention on the part of Congress that the mere fact that intoxicating liquors, brought by a common carrier into the State, have not reached their ultimate destination in the State, or been delivered to the consignee, shall exempt them, after coming within the territorial limits of the State, from the exercise of its police powers.

By the statute of the State of Iowa, under which Rhodes was prosecuted, "if any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points or from one place to another within this State, for any other person or persons or corporation, any intoxicating liquors, without first having been furnished with a certificate from and under the seal of the county auditor of

the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed or delivered, is authorized to sell such intoxicating liquors in such county," the company, agent or person so offending shall, upon conviction, be fined in the sum of $100 for each offence; and "the offence herein defined shall be held to be complete and shall be held to have been committed in any county of the State, through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered." But it is provided that "the defendant may show as a defence hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him." McClain's Code of Iowa, § 2410. And it was held by the Supreme Court of the State that, in order to support the conviction of Rhodes, it must appear that, when doing the act complained of, he knew that the box in question contained intoxicating liquor.

The material facts, as appearing by the record, and stated in the opinion of the Supreme Court of Iowa, reported 90 Iowa, 496, were as follows:

The intoxicating liquor, which Rhodes has been adjudged guilty of transporting or conveying from one place to another within the State of Iowa, in violation of the statute of the State, was a jug of whiskey, contained and hidden in a wooden box about a cubic foot in size, marked "W. H.," represented to contain groceries, delivered at Dallas in the State of Illinois, by a company doing business at that place, to the Chicago, Burlington and Quincy Railway Company, and consigned to one William Hown at Brighton in the State of Iowa; and was carried, under a through way bill, by that railway company over its road to Burlington in the State of Iowa, and was there transferred to the Burlington and Western Railway Company, whose road was wholly within the State of Iowa, and was carried by this company to Brighton. Upon its arrival at Brighton, it was delivered by the trainmen

upon the platform of this company's depot; and immediately afterwards Rhodes, the company's station agent at Brighton, complying with the directions of his employer, carried the box from the platform into the freight room of the depot building, where, on the same day, it was seized by a constable on a search warrant, being then held by the company for payment of the unpaid freight and for delivery to the consignee. Neither Rhodes nor the company held a permit for the transportation or sale of intoxicating liquors, or a certificate from the county auditor that the consignee was authorized to sell such liquors.

Rhodes testified that before the arrival of the box a mail carrier told him he was looking for a box from Dallas for William Hown, and said it was likely to be marked "W. H.," and would contain alcohol or whiskey; that he told the mail carrier he had not received a box of that description; that the box arrived the next day; and that he supposed, perhaps, this was the box the mail carrier told him would come. The Supreme Court of Iowa was of opinion that this testimony clearly showed that Rhodes knew that the box contained intoxicating liquors; and its conclusion upon this question of fact is not reviewable by this court. *Dower* v. *Richards*, 151 U. S. 658; *Egan* v. *Hart*, 165 U. S. 188; *Turner* v. *New York*, 168 U. S. 90, 95.

Nor does the conclusion of that court, that Rhodes, by moving the box from the depot platform to the freight house, only a few feet off, transported or conveyed the box from one place to another within the State, within the meaning of the statute of Iowa, present any question of law which this court is authorized to review, except so far as the statute, thus construed, may deprive him of a right under the Constitution and laws of the United States.

The intoxicating liquor in question was brought by rail under a through way bill from Dallas in the State of Illinois to Burlington and Brighton in the State of Iowa. It was carried by the Chicago, Burlington and Quincy Railway Company (whose road ran from Illinois into Iowa) to Burlington, and was there delivered to the Burlington and Western Rail-

way (whose road was wholly in the State of Iowa) and was carried by this company to Brighton, and was there delivered by its servants upon the platform of its freight station. Taking into consideration that so much of the transportation as was performed by an interstate railroad company had been accomplished, and that the remainder of the transportation was by an Iowa corporation and wholly within the State of Iowa, and had been so far completed as to land the intoxicating liquor upon the soil of Iowa, we are of opinion that there had been "an arrival in such State," so as to subject the liquor to the exercise of the police powers of the State of Iowa, within the letter and the spirit of the act of Congress.